

ORIGINAL

- VOLUME - TWO -

1 STATE OF NEW YORK: COUNTY COURT:

2 COUNTY OF ONONDAGA: CRIMINAL TERM: Part No. I:

3 - - - - - THE PEOPLE OF THE STATE OF NEW YORK,

4 Indictment #: 2016-0961-1,
5 superceding #: 2016-0061-1
6 Index #: 16-0049

Box 505

7 vs.

TRIAL

8 TONY W. JENNINGS,

9 Defendant.

10 - - - - - CPCS 3

11 Criminal Courts Building
12 505 South State Street
Syracuse, New York 13202
February 6, 7 and 8, 2017

13 BEFORE: HONORABLE STEPHEN J. DOUGHERTY,
14 County Court Judge,
and a jury

15 APPEARANCES:

16 William J. Fitzpatrick, Esq.
17 District Attorney, Onondaga County

18 BY: JOSEPH J. CENTRA, ESQ.
19 Assistant District Attorney
Criminal Courts Building, Fourth Floor
Syracuse, New York 13202

20 BY: JOHN A. LOFARO, ESQ.
21 Attorney for the Defendant
307 South Clinton Street, #200
Syracuse, New York 13202

22 The Defendant, present in person

FILED

JUL 28 2017

23 ONONDAGA CO CLERKS OFFICE

24 Reported By:
25 Patrick J. Reagan, RDR
Official Court Reporter

- Jennings - Trial - 2/7/17 -

190

1 But I have to tell you that if there is any
2 misbehavior, and I told you this, if there is any
3 misbehavior in the courtroom, you will forfeit your right
4 to be here, okay? And if there is any misbehavior outside
5 the courtroom, you could potentially forfeit your right to
6 be here.

7 So, what I am going to suggest to you, Mr.
8 Jennings, is behave yourself. Be here for the trial so you
9 can hear everything that's taking place during the course
10 of your trial, and help Mr. LoFaro defend the case.

11 Anything else we need to say about that, Mr.
12 LoFaro?

13 MR. LOFARO: No, Your Honor.

14 THE DEFENDANT: Your Honor? I don't -- I didn't
15 never refused court. I know that's, you stated yesterday
16 that court was to start at 10:30. I was called this
17 morning and told that I had traffic court or misdemeanor
18 court, for instance. So I refused that. But I never
19 refused to come to this court because I was told it was
20 10:30.

21 THE COURT: Okay.

22 THE DEFENDANT: I don't understand.

23 THE COURT: Well, if it's a misunderstanding,
24 that's one thing. But you have to go where they need you
25 to go. When they bring people over for my calendar, they

- Jennings - Trial - 2/7/17 -

191

1 may need you to come over for that too, so they don't have
2 to make special trips. I leave that up to the deputies.
3 And yourself, just it's good that you want to be here and
4 let's keep it that way. My calendars over the next couple
5 days are not so long, so we won't have the delay that we
6 had today.

7 Mr. Centra, are you ready to go with your opening
8 and with witnesses?

9 MR. CENTRA: Yes, Judge. Just briefly, at the
10 end of yesterday, Mr. LoFaro asked for the Grand Jury
11 testimony from the defendant. I have turned that over. I
12 turned that over to him yesterday after court.

13 THE COURT: I know you previously put it in the
14 file. We got a copy of your cover letter.

15 MR. CENTRA: I have.

16 THE COURT: Mr. LoFaro, you have that?

17 MR. LOFARO: I do, Your Honor.

18 THE COURT: And anything else, Mr. LoFaro, you
19 want to put on the record before we bring the jury?

20 MR. LOFARO: No, Your Honor.

21 THE COURT: Okay. Let's have the jury, please,
22 Mary. We don't have any potential witnesses in the
23 courtroom, do we? John, we don't have any witnesses in the
24 courtroom, do we?

25 MR. LOFARO: No.

- Jennings - Trial - 2/7/17 -

192

1 THE DEFENDANT: No.

2 MR. LOFARO: No, Your Honor.

3 THE COURT: Great. Thank you.

4 (The jury entered the courtroom at 10:56 a.m.)

5 THE COURT: Good morning, folks. We are in the
6 presence of the jury. Mr. Centra, Mr. LoFaro, Mr.
7 Jennings.

8 Ladies and gentlemen, I apologize for the delay.
9 I had a much bigger calendar this morning than we
10 anticipated. We had an awful lot of cases on. We did get
11 through all of them. Our calendar tomorrow is very small.
12 Our calendar the next day is very small, so that's good.
13 We will get started much closer to the time I would like to
14 get started, so I do apologize for that.

15 Now we are ready to hear the opening statements
16 of counsel. And then we will go into the proof of the
17 case. Mr. Centra, are you ready to deliver your opening
18 statement?

19 MR. CENTRA: I am, Your Honor.

20 THE COURT: Go right ahead.

21 MR. CENTRA: Thank you, Judge.

22 (Opening statement by Mr. Centra:)

23 MR. CENTRA: It's approximately 6:45 in the
24 evening, January 5th 2016. Patrol officer sees a
25 suspicious vehicle in a parking lot. They shine their

- Centra - Opening - 2/7/17 -

193

1 spotlight on that vehicle. In that vehicle, they see two
2 individuals. One of them being Tony Jennings. They look
3 in that vehicle. They see a digital scale, what appears to
4 be cocaine on it. The officer asks Mr. Jennings to exit
5 that vehicle. It was at this point he attempts to run. My
6 name is Joe Centra, and I am here representing the People
7 of the State of New York.

8 January 5th 2016, Officers Jeremy Decker and
9 Darrin Ettinger are patrolling the 100 block of Radisson
10 Court in the City of Syracuse, when they see this vehicle.
11 As I said, they shine their light on this vehicle just to
12 see what's going on. It's about 6:45 in January. It's
13 dark out. They approach the vehicle. They see two
14 occupants in the vehicle. And the two occupants, once the
15 lights shine on the vehicle, begin making what the officer
16 described as furtive movements -- movements towards their
17 lower body, which they believe look like they are trying to
18 conceal or hide something.

19 Officer Decker approaches the driver's side door,
20 where Tony Jennings is sitting. And he sees a digital
21 scale with what appears to be cocaine sitting on it in
22 plain view.

23 Now based on what he saw, Officer Decker asks
24 Tony Jennings to step out of the vehicle so he could search
25 him for any potential illegal drugs. Tony Jennings steps

- Centra - Opening - 2/7/17 -

1 out of the vehicle, and Officer Decker begins to search
2 him. As Officer Decker begins to search him, Tony Jennings
3 then begins to run. Officer Decker chased him for a brief
4 period and was able to catch up to him and take him into
5 custody after a brief struggle.

6 Now as Officer Decker was searching Tony
7 Jennings, he found \$110 in cash and a bag of cocaine in his
8 pocket, and a cellphone.

9 Jennings was then arrested for possessing this
10 cocaine that was in a bag, in his pocket.

11 Officer Ettinger further searched Tony Jennings'
12 vehicle, and in there he found an additional \$150 cash, and
13 another cellphone. And I stated previously, Officer Decker
14 had found the scale in that vehicle.

15 Tony Jennings was then arrested for possessing
16 cocaine. It was tested on the spot by the officers.

17 And while they are preparing the arrest report,
18 in their vehicle, they asked Tony Jennings a basic
19 question: If he was employed? And he told them that he
20 was currently out of work and that he was selling crack to
21 get by. Those are the officers that you're going to hear
22 from.

23 You're also going to hear from Jennifer Wilson,
24 who is a forensic chemist who works for the Center for
25 Forensic Sciences. And she will tell you how she came to

- Centra - Opening -

1 be involved in this case involving Tony Jennings. She will
2 tell you how she analyzed the substance that was recovered
3 by Officer Decker on that day from Tony Jennings. She will
4 tell you that she weighed the substance, and the aggregate
5 weight of the substance as a whole, was 2.57 grams. She
6 will further tell you that she tested the substance, and
7 the substance tested positive for cocaine.

8 And she will also say she further tested the
9 substance for the purity of the cocaine in the substance.
10 She found that that substance, 2.57 grams total had
11 actually contained 1,267 milligrams of pure cocaine within
12 there.

13 You are finally going to hear from Sergeant David
14 Proud, with the Syracuse Police Department. Sergeant Proud
15 will tell you about his training and experience in law
16 enforcement. And he will tell you his training and
17 experience investigating drug-related crimes. He has years
18 and years on the job. And he will tell you that the
19 phones, the money, and the scale along with the amount of
20 cocaine that was found on Tony Jennings on January 5th
21 2016, is not consistent with personal use of the drug
22 cocaine. He will tell you it's more consistent with a
23 person possessing the drugs with intent to sell it.

24 By the end of this case, I intend to show you
25 that Tony Jennings possessed over 500 milligrams of

- Centra - Opening -

196

1 cocaine. I intend to show you that the amount of cocaine
2 on his person would not be used for personal use. That is,
3 that his intent was to sell that cocaine. And I intend to
4 show you that Tony Jennings is guilty, guilty of criminal
5 possession of a controlled substance in the third degree,
6 and criminal possession of a controlled substance in the
7 fifth degree. Thank you, everybody.

8 THE COURT: Thank you, Mr. Centra. Mr. LoFaro,
9 does defense wish to give an opening statement?

10 MR. LOFARO: I do, yes, Judge.

11 THE COURT: Okay. Go right ahead, sir.

12 MR. LOFARO: Thank you, Your Honor.

13 (Opening statement by Mr. LoFaro:)

14 MR. LOFARO: Good morning, ladies and gentlemen.
15 How are you? Ladies and gentlemen, I am going to start
16 with a quote that I gleaned from a novel by, excuse me,
17 Anitol France. I picked up an old dusty book and I know I
18 am dating myself. I don't know if any of you recall the
19 Old Book Warehouse on Bear Street. But it used to be my
20 home away from home. I used to spend an awful lot of time
21 there. And my current home is still littered with books
22 that I acquired at the Book Warehouse. It was one of my
23 favorite places. I know you're probably not a lover of
24 classics, the sixth grade novel by Mr. Anitol France. Who
25 is Anitol France? He was a French author in the 1800's.

- LoFaro - Opening -

197

1 He was a journalist. He was a poet. And he was a social
2 activist. And Anatol France was a Nobel Prize winner. And
3 one of the quotes that I have always looked to and gleaned
4 what I believe is a lot of wisdom from the quote that says:
5 Justice is the means by which established injustices are
6 sanctioned.

7 Now, let's think about that for a minute. I am
8 sure in 1903, in France, and here in the United States,
9 that was probably much more true than it is today.
10 However, unfortunately, regrettably, I think that that's
11 still true to a large extent here in the United States.
12 Justice, justice is the means by which established
13 injustices are sanctioned. Now, what that means is we are
14 saying it's okay to cut corners. It's okay to do certain
15 things that shouldn't be done to try and get to where we
16 want to be. And that's not what we believe in. That's not
17 what we believe. That's not what our system of criminal
18 justice is predicated on, in the 21st century.

19 I know I used a couple analogies yesterday. I
20 want to use the analogy today. I was never very good at
21 these. But I am sure you're all familiar with the mazes
22 that we used to have as kids, where you're supposed to try
23 and follow the lines all the way through until you
24 ultimately find the opening at one end, from the opening at
25 the other end. I never engaged in those because I could

- LoFaro - Opening -

1 never do them. I would always do them in pen. I would
2 make a mess of them. I never tried to do those. But,
3 obviously if they are done correctly, if they are done
4 properly, if I could equate that to police procedure,
5 police procedure requires that you follow one step after
6 another, after another, until you do it the way it's
7 supposed to be done. You need to go and not find a brick
8 wall, and if you do find that brick wall, you need to turn
9 back and you need to start over again.

10 Oftentimes, regrettably, unfortunately, we are
11 stripped of our rights, Fourth Amendment rights or whatever
12 rights they may be. And we do what we need to do. And we
13 rationalize that the ends justifies the means. And we
14 can't ever allow that to happen. Because the end doesn't
15 justify the means. We can't take a pen, and start at that
16 little square, which is the start, and draw a line across
17 the page and go to the end because that's not, again, what
18 our system is predicated on.

19 You heard Mr. Centra talk about the charges that
20 are now pending, and what happened. Well, that's his
21 version of what happened. But you're the ultimate deciders
22 of, if that's actually what happened or if that's not what
23 happened. Because what you're going to hear from my
24 client, and who is cloaked with a presumption of innocence
25 as we already spoke about, and he doesn't have to testify.

- LoFaro - Opening -

199

1 He can sit there because the burden of proof is on the
2 People. They have to prove this case beyond a reasonable
3 doubt. He doesn't have to say a thing. But he can't wait
4 to get up there on the stand and tell you what happened.
5 He is eager to tell you what happened. Because he was
6 ripped of his constitutional rights. And he wants to let
7 you know what happened to him.

8 Now, it's easy to sit here and say, okay, you
9 know, and I am going to be very blunt. I am going to be
10 very candid. It's easy to say, well, the police officers
11 came into what they considered a high crime area, and saw a
12 suspicious vehicle.

13 And I hope -- let me backtrack just for one
14 minute. The laws that we adhere to today are promulgated
15 on common sense. So that's one thing that I am going to
16 ask all of you to do, when you look at this evidence, use
17 your common sense. Use your intelligence. And apply your
18 common sense to the facts. Because when you hear these
19 facts, you're going to go -- you're going to scratch your
20 head. You're going to go: Wait a minute, that doesn't
21 make any sense. He wouldn't do that. He couldn't have
22 been doing that. And unfortunately, some of these things
23 that are done, these established injustices, are improper
24 police practices and improper police procedures.

25 Now, Mr. Centra talked about a suspicious

- LoFaro - Opening -

200

1 vehicle. A suspicious vehicle. What is a suspicious
2 vehicle? The evidence is going to show that he was in a
3 vehicle. There was nothing suspicious about his vehicle.
4 It was a sedan; it was a car. Nothing suspicious about the
5 vehicle.

6 You're going to hear about furtive movements.
7 Furtive movements. Again, it's a shortcut. It's an
8 around-end. It's what police officers do to get where they
9 want to go.

10 Furtive movements more often than not means
11 fishing expedition. Let's throw the constitution out the
12 window. Let's throw the bill of rights out the window.
13 Let's strip him of his constitutional rights, and just go
14 searching for whatever we want to search for, because he's
15 a black man, parked in a car doing nothing. Doing nothing.

16 And you're going to hear him testify. He is
17 going to tell you what he did. He is going to tell you a
18 true story, what actually happened. His buddy -- they were
19 watching a basketball game! Left the basketball game to
20 help out a friend, you know. I tend to try and stay away
21 from cliches. But the cliche that I am going to use right
22 now encapsulates exactly what happened to this gentleman
23 over here: No good deed goes unpunished. His friend
24 called him. He had a car that hadn't been started. It was
25 freezing cold. They went out. They took a taxi cab. This

- Lofaro - Opening -

1 car stunk like crazy. They had, they had gas -- they were
2 trying to get his buddy's car going. They went over to the
3 car. Couldn't get it going. They opened the hood. Their
4 hands were freezing, everything. They put -- they are not
5 auto mechanics. They could not get the car started. So
6 doing a favor for his friend, he goes and tries to help him
7 get that vehicle started. Doesn't start. His friend
8 doesn't have a car. He picked him up, because he is
9 driving. They couldn't get his friend's car started. Nice
10 move, to bring his friend back to his residence, and drop
11 him off.

12 They are sitting in the parking lot, in a parking
13 space, minding their own business. They are not doing
14 anything. They are not committing any crime. They are not
15 causing a disturbance. They are two friends talking in a
16 vehicle. He is dropping his buddy off. He is going to
17 talk to him for a couple of minutes, and drop him off.

18 As they are sitting in the car, the police
19 officers roll in. And they deem this, that's a suspicious
20 vehicle. Well, again I am going to be blunt. I am going
21 to be candid. Why is it a suspicious vehicle? Two guys
22 sitting in a car talking to one another? There is nothing
23 suspicious about that. It's just an area where there is
24 a -- certain evidence, he is a black man. There is a
25 certain crime rate. And because there is a certain crime

- LoFaro - Opening -

202

1 rate, there is a certainty in there, these police officers
2 deem it appropriate to take that around and to try and make
3 one of these established injustices the normal. To try and
4 sanction that type of behavior, it's wrong. It's not what
5 we believe in. This gentleman right here has every right
6 to pick up his buddy, help him out, drop him off. Try and
7 help him start his car. And go on about his business.

8 On that day, before this set of circumstances
9 that befell them, that's all he was doing, he was going to
10 finish watching his basketball game. What happened
11 instead? Because he had a suspicious vehicle, and furtive
12 movements? Which again, means nothing more than we are
13 going to try and search you if we can, and we are going to
14 say that we had a right to -- whether we have a right to or
15 whether we don't.

16 So, that's where you're at with regards to this.
17 And again, there are two different, there are two different
18 allegations here. One is possession. And one is with
19 intent to sell. So again, we go back to that mental state.

20 I don't mean to be flippant. And I don't mean
21 to say that Mr. Centra is not telling you everything that
22 you need to hear. But, again, I am going to back to what I
23 said first: Common sense. Common sense. You're going to
24 see, you're going to see the drugs. So you're going to see
25 a bag. You're going to see the size of it. Mr. Centra's

- LoFaro - Opening -

203

1 own words: A minute amount of drugs. A small amount of
2 drugs. Your common sense is immediately going to tell
3 you: This guy is not distributing or selling anything.
4 And I don't care what Officer Proud says, because you're
5 not going to believe it, because it doesn't make any sense.
6 Using your common sense, you're going to realize what
7 Officer Proud is saying doesn't make sense. These are two
8 guys in a car, with an infinitessimally small amount of
9 what is considered a controlled substance.

10 That's the allegation. If you find that, even if
11 you find he possessed that, you're certainly not going to
12 under any set of circumstances believe that he was selling
13 it. And he had a pittance on him. Couple hundred bucks.
14 And certainly pocket change. Everyone has a couple hundred
15 dollars on them or access to a couple hundred dollars. And
16 he also had that infinitesimally small amount of cocaine.
17 You're going to hear him try and say, yes, he was going to
18 bust it up later. And the reason that it was in one small
19 tiny little bag was because if he was ultimately arrested
20 sometime later down the road, it wasn't packaged for sale.
21 Well, you're going to see this exhibit. And it couldn't be
22 packaged for sale. It's too small. There is nothing to
23 package. Each package would be able to fit on a head of a
24 pin.

25 So there is no sale here. And there is no intent

- LoFaro - Opening -

1 to sell. And again, your common sense is going to show you
2 that. So that's all you have to do is use your common
3 sense. And listen to this man over here, because he is
4 going to tell you what happened that day.

5 Again, no good deed goes unpunished. I ask that
6 you not allow this system to sanction these injustices, and
7 make it the norm, because that's not what our system is
8 predicated on.

9 So, again, I thank you all for being here. And
10 that's really the only thing I am going to ask you, is to
11 use your common sense, apply your common sense to the law
12 as I hear it, and as these facts come out, because they are
13 going to speak for themselves. And I am confident that
14 you're going to do the right thing. Thank you very much.

15 THE COURT: Thanks, Mr. LoFaro. Mr. Centra,
16 ready to call your first witness?

17 MR. CENTRA: I am, Your Honor.

18 THE COURT: Okay.

19 MR. CENTRA: First witness is Officer Jeremy
20 Decker.

21 J E R E M Y D E C K E R, Called as a witness in behalf of the
22 People, being duly sworn, testified as follows:

23 THE COURT: Good morning, Officer.

24 THE WITNESS: Good morning, sir.

25 DIRECT EXAMINATION BY MR. CENTRA:

Decker - direct - Centra

205

1 Q. Good morning.

2 A. Good morning.

3 Q. Would you state where you're employed?

4 A. Syracuse Police.

5 Q. And what is your position there?

6 A. I am a police officer with the crime reduction team.

7 Q. What is the crime reduction team?

8 A. It's a small pro-active 12-man unit that patrols the
9 highest crime areas in the city.

10 Q. And how long have you been in law enforcement?

11 A. Almost 11 years.

12 Q. And can you kind of go through your general duties and
13 responsibilities in your position right now?

14 A. We just, I work with a partner, police officer
15 Ettinger. Like I said, we patrol the high crime areas in the
16 city. We focus on guns, gang members and drugs.

17 Q. Now have you been involved in drug investigations
18 during the course of your career?

19 A. Yes, hundreds.

20 Q. Now I am going to draw your attention to January 5th
21 of 2016. Do you recall that date?

22 A. Yes, sir.

23 Q. And were you working in your capacity with the
24 Syracuse Police on that date?

25 A. Yes.

Decker - direct - Centra

1 Q. Now at any point on this date did you become involved
2 in a drug investigation?

3 A. Yes.

4 Q. Could you describe how you became involved in this
5 investigation?

6 A. We were in Pioneer Homes. It's part of the Syracuse
7 Housing Authority. Patrolling that area, it's a high crime
8 area. Lots of shots-fired. Lots of drugs, robberies,
9 assaults. You name it. So we were in this area. We were in
10 the 100 block of Radisson Court. And we see a suspicious
11 vehicle. What's suspicious about it is, it's dark. We lit
12 with my spotlight. I was driving. And the two occupants in
13 the vehicle immediately looked at us, and began making furtive
14 movements.

15 Q. Could you describe what furtive movements are, sir?

16 A. Furtive movements to me are they are quick, sneaky,
17 actions, normally out of our view. And in my experience, it's
18 always someone trying to hide an illegal item, whether it be
19 drugs or a weapon.

20 Q. Could you describe the furtive movements that you saw
21 when you shined your light on this vehicle?

22 A. Like I said, they looked, saw that we were the police,
23 turned back around, looked down, they were making quick
24 movements, out of our sight. Towards their lower bodies.

25 Q. Now what happened after you witnessed this?

Decker - direct - Centra

207

1 A. We approached the vehicle.

2 Q. And what happened when you approached this vehicle?

3 A. I approached the driver's side window. Immediately,
4 and in plain view, I observed a black digital scale, with a
5 white residue, which is consistent with cocaine, right near the
6 center console area. I recovered that.

7 Q. Now could you describe the vehicle that you approached
8 on this day?

9 A. It was a black Acura. I believe it was New York plate
10 GWS 7631.

11 Q. Officer, I am going to show you what has been marked
12 as People's Exhibit 1. Take a look at Exhibit 1. Tell me, do
13 you recognize this?

14 A. Yes, sir.

15 Q. What do you recognize that as?

16 A. The black digital scale.

17 Q. Is that the exact digital scale that you just
18 testified to that you saw on that date?

19 A. Yes, sir.

20 MR. CENTRA: I move to enter Exhibit 1 into
21 evidence.

22 THE COURT: Mr. LoFaro, any objection to 1 coming
23 in, the scale?

24 MR. LOFARO: No, Your Honor.

25 THE COURT: 1 is received.

Decker - direct - Centra

1 Q. Now after you approached the vehicle and saw the
2 scale, in plain view, did you speak with the driver of the
3 vehicle?

4 A. I spoke with the occupants of the vehicle.

5 Q. Okay. Now who do you first speak with?

6 A. I immediately recovered the scale. Then I asked both
7 occupants if they possessed or used drugs.

8 Q. And what happened next during the course of your
9 investigation?

10 A. The front passenger, who was identified as Willie
11 Jones, told me he just used cocaine in the vehicle but he
12 didn't have any left.

13 Q. And what did you do next after hearing this?

14 A. Officer Ettinger was on his side. He had Mr. Jones
15 exit the vehicle, conducted a search of him, which was negative
16 for illegal drugs. I then asked Mr. Jennings, who was in the
17 driver's seat, to exit the vehicle, and I began a search of
18 him.

19 Q. Do you see Mr. Jennings here in court today?

20 A. Yes, sir.

21 Q. Could you point to him and describe an article of
22 clothing that he's wearing?

23 A. He is wearing a tan shirt and pants over there.

24 THE COURT: Let the record reflect the Officer
25 has pointed and identified Mr. Jennings.

Decker - direct - Centra

209

1 Q. Now what happened after he stepped out of the vehicle?

2 A. I began a search of him. I was holding onto the back
3 of his pants with one hand. I began to go in his front right
4 pocket, and he took off running.

5 Q. And what happened after he started running?

6 A. I chased him maybe approximately 10 feet, tackled him
7 from behind to the ground.

8 Q. And what happened after that?

9 A. He resisted briefly. With Officer Ettinger's help, we
10 put him in handcuffs and I continued my search.

11 Q. And what if anything did you find during the course of
12 your search?

13 A. In his front left pants pocket, he had a clear knotted
14 section of plastic with a beige, chunky substance and \$110 in
15 cash.

16 Q. I am now going to show you what's been marked as
17 Exhibit 2, People's Exhibit 2, do you recognize Exhibit 2?

18 A. Yes, sir.

19 Q. What do you recognize that as?

20 A. It was the drugs that I found in Mr. Jennings' pocket.

21 Q. On the date that you testified to?

22 A. Yes.

23 Q. And how can you tell that those were the drugs?

24 A. It's similar in appearance. It's not chunky like it
25 was that day, but it has my seal on the top.

Decker - direct - Centra

210

1 Q. And how did you mark that seal?

2 A. With my initials, and my I.B.M., and date and time.

3 MR. CENTRA: I move to enter Exhibit 2 into
4 evidence?

5 THE COURT: Mr. LoFaro, any objection to 2 coming
6 in?

7 MR. LOFARO: No, Your Honor.

8 THE COURT: 2 is received.

9 Q. Now you said it was a beige, chunky substance. In
10 your training and experience in law enforcement, what did this
11 appear to you?

12 A. Crack cocaine.

13 Q. Now, during your years in law enforcement, did you
14 receive any training on identifying and testing illegal
15 substances?

16 A. Yes, sir. At the police academy.

17 Q. Did that involve cocaine?

18 A. Yes.

19 Q. And did that involve field-testing these substances?

20 A. Yes, sir.

21 Q. And did you in fact field-test this substance?

22 A. Yes.

23 Q. And what if anything did it test positive for?

24 A. Cocaine.

25 Q. And how did you test this substance?

Decker - direct - Centra

1 A. I used the 904 Reagent field test kit.

2 Q. Now after you recovered these items from Mr. Jennings,
3 what did you do next during the course of your investigation?

4 A. I believe we conducted an inventory search of the
5 vehicle. The vehicle ended up being towed. And some other
6 items were recovered also.

7 Q. Do you recall what items were recovered?

8 A. There were two cellphones, and an additional \$150 cash.
9 And I believe that's it.

10 Q. Did you find any drug-use paraphernalia during the
11 search of Mr. Jennings?

12 A. No, sir.

13 Q. Did you find any drug-use paraphernalia during the
14 search of the vehicle?

15 A. No, sir.

16 Q. You stated he was placed under arrest at this point?

17 A. Yes.

18 Q. And did Mr. Jennings make any statements to you after
19 he was placed under arrest?

20 A. We were filling out the arrest report in the vehicle.
21 He was in the back seat. One of the boxes in the arrest report
22 asks if you're employed. And he said, no. He had been working
23 some construction job at Hotel Syracuse, but was out of work,
24 and was selling cocaine to make money.

25 Q. Now going back to your initial approach of the

Decker - direct - Centra

1 vehicle, do you receive training in, I guess, procedure when
2 approaching vehicles?

3 A. A lot of it, it's just experience.

4 Q. Is there a certain, I guess, procedure that you would
5 go through in the initial search in what could lead you to,
6 you know, further investigation into an initial inkling of a
7 crime?

8 A. Yes. You get field training when you're with a senior
9 officer. And the experience is, you have there, and when
10 you're on your own, it's just being involved with numerous
11 incidents over my career that has taught me more than anything.

12 Q. Did everything that you did there on that day follow
13 the procedure that you had been trained in?

14 A. Yes, sir.

15 MR. CENTRA: I have no further questions for this
16 witness. Thank you, Officer.

17 THE COURT: All right. Mr. LoFaro,
18 cross-examination for Officer Decker?

19 MR. LOFARO: Yes, Your Honor.

20 CROSS-EXAMINATION BY MR. LOFARO:

21 Q. Officer Decker.

22 A. Good morning, sir.

23 Q. How are you?

24 A. Good. How are you?

25 Q. Good. Thank you. Officer Decker, just for

Decker - cross - LoFaro

213

1 clarification if you could, you said that you noticed a
2 suspicious vehicle and that you knew it was a suspicious
3 vehicle because it was dark? Were you referring to the
4 vehicle, were you referring to the time of day?

5 A. When I said, I said it was dark outside, I believe.

6 Q. Okay. I think your testimony was, and I don't know if
7 we need it read back or we can just move forward, you said: I
8 knew it was a suspicious vehicle because it was dark.

9 A. I think you misunderstood.

10 Q. I misunderstood?

11 A. Yes, sir.

12 Q. Okay. What caused you to believe that that black
13 Acura was a suspicious vehicle, the vehicle itself -- not the
14 occupants, not the furtive movements -- what was it about that
15 vehicle that drew your attention? What do you believe was
16 suspicious about a black Acura?

17 A. Like I said before, when I turned my spotlight on the
18 vehicle, and both occupants noticed our presence, and began
19 making furtive movements, that made it suspicious.

20 Q. So prior to your turning your flashlight on, it wasn't
21 a suspicious vehicle, correct?

22 A. Correct. We were driving through the parking lot, yes.

23 Q. Okay. Now, you said that this is a high crime area,
24 the shots fired -- were there any shots fired?

25 A. What day?

Decker - cross - LoFaro

1 Q. This day, during, immediately prior to this arrest?

2 A. I would have to go back through the 911 dispatch notes
3 so I could answer that.

4 Q. Was there any type of disturbance at all in that
5 parking lot on that particular evening when you approached
6 that vehicle with your spotlight?

7 A. I don't believe so.

8 Q. Now, you mentioned furtive movements, and you
9 described it as like movements down towards their laps or
10 towards the lower part of their persons, correct?

11 A. Yes, sir.

12 Q. Okay. Now, when you ultimately inventoried that
13 vehicle, what you allege you took into evidence, was a scale,
14 correct?

15 A. I did take a --

16 Q. How big was the scale?

17 A. It's right here in front of me, sir.

18 Q. Tiny? Black and dark, correct?

19 A. Yes.

20 Q. And that was right on top of the console?

21 A. It was right near the center console.

22 Q. Right near the console?

23 A. Yes.

24 Q. Plain view?

25 A. Yes.

Decker - cross - LoFaro

215

1 Q. Okay. You saw these furtive movements, but when you
2 inventoried the vehicle, they hadn't secreted a single thing,
3 had they?

4 A. I found drugs on Mr. Jennings.

5 Q. Correct. But no reason to believe those drugs weren't
6 on Mr. Jennings, correct?

7 A. You know, it's -- I don't want to speculate.

8 Q. Okay. Now, you spoke about the money that you had
9 recovered. Could you explain that to me again? What was the
10 first amount of cash and where did you find that?

11 A. It was \$110 in his front left pants pocket.

12 Q. Okay. And then you said at a later date you recovered
13 a different amount of cash, is that true?

14 A. On the same date, sometime later, Officer Ettinger
15 recovered \$150 from the vehicle.

16 Q. From the vehicle?

17 A. Yes, sir.

18 Q. Okay. Officer, do you recall testifying about these
19 events before the Grand Jury, correct?

20 A. Yes, sir.

21 Q. Okay. Now do you recall telling the Grand Jury at
22 that time that your testimony right now, that there was
23 another \$110 in the console? Do you recall telling the Grand
24 Jury at that time that there was \$100 cash in his other
25 pocket?

Decker - cross - LoFaro

1 A. All I recall is 110 in his front left. And 150 in the
2 center console.

3 Q. Okay. Any reason why you would have told the Grand
4 Jury that it was \$100 cash in the other pocket, in the left
5 pocket, and \$100 in the other pocket?

6 A. How much again?

7 Q. At the Grand Jury, I believe it's your testimony that
8 there was \$110 in cash?

9 A. Okay.

10 Q. In his front left pocket?

11 A. Okay.

12 Q. And \$100 in cash in his other pocket?

13 A. No, I don't recall that, sir.

14 MR. LOFARO: Okay. Do I need this marked, Your
15 Honor?

16 THE COURT: What is it?

17 MR. LOFARO: The Grand Jury minutes.

18 THE COURT: No, you have asked him.

19 MR. LOFARO: Okay.

20 Q. You testified, Officer, I believe that there was no
21 drug paraphernalia, correct?

22 A. The only drug paraphernalia that would be considered
23 drug paraphernalia I had was the scale. He asked about user
24 paraphernalia.

25 Q. You said that it appeared that there was drug residue

Decker - cross - LoFaro

1 on the scale, correct?

2 A. Correct.

3 Q. Did you take any drug residue off of that scale and
4 test it to see whether or not that was actually drugs or if it
5 wasn't drugs?

6 A. That day we didn't have a cocaine wipe on us, so, no.

7 Q. So, it appeared to be, you're claiming drug residue
8 but it was never tested?

9 A. It was sent to the lab to be tested. So I don't know
10 if the lab tested it or not.

11 Q. Okay. Did you charge him with possession of drug
12 paraphernalia for being in possession of that scale?

13 A. No, sir.

14 Q. Okay. When you looked at the drugs, in that packet
15 right there, that Mr. Centra brought up to you, you said, are
16 these the drugs that you recovered from Mr. Jennings, you said
17 they looked similar, not identical, just similar?

18 A. Well, I think the lab, it was a beige, chunky
19 substance. If you look at it, I think what the lab does is
20 they have to crush it up into a powder. So, it's not chunky
21 like it was when I recovered it, sir.

22 Q. Okay. And was it you yourself that did the reagent
23 field test?

24 A. Yes, sir.

25 Q. And once that was, once you conducted, once you

Decker - cross - LoFaro

218

1 finished conducting that reagent field test, what did you do
2 with the drugs at that point?

3 A. I believe they were later taken to the Public Safety
4 Building. Packaged, sealed and turned in.

5 Q. What did you do, what was your immediate procedure
6 with regards to the drugs themselves? You say you believed
7 they were turned into the PSB. What did you personally do
8 with them?

9 A. Our procedure is they were taken to the Public Safety
10 Building.

11 Q. By whom?

12 A. Ourselves.

13 Q. Did you personally take them to the Public Safety
14 Building?

15 A. I believe so.

16 Q. You don't recall?

17 A. Probably if I recovered them, and I turned them in,
18 that's what happened.

19 Q. Okay. But as you sit here, you can't be 100 percent
20 positive that you brought them, is that?

21 A. It's over a year, I had hundreds of arrests since then.

22 Q. I know memory is fallible. I am not chiding you for
23 it. I am just asking you, as you sit there, you cannot be 100
24 percent positive you brought those drugs to the Public Safety
25 Building, is that correct?

Decker - cross - LoFaro

219

1 A. I am 100 percent sure. Do you know why? Because I
2 recovered them. And I turned them in. This is my seal. I
3 tested them.

4 Q. So now you're 100 percent sure?

5 A. I am 100 percent sure.

6 MR. LOFARO: Okay. Officer Decker, thank you
7 very much. No further questions.

8 THE WITNESS: Thank you.

9 THE COURT: Officer, could I ask you, just maybe
10 help out the jury: What is a cocaine wipe that you
11 referred to?

12 A. It's like one of those, you go to a restaurant, they
13 give you a little square package like a clean wipe to wipe your
14 hands. Same package, except it's just a test for cocaine.
15 Positive or negative. It's like -- paper, you wipe the
16 surface, the scale, and they will give you a positive or
17 negative reaction to cocaine.

18 THE COURT: You indicated that you didn't have
19 any in the patrol car that evening?

20 A. No, sir.

21 THE COURT: Thank you. Anything else, Mr.
22 Centra?

23 MR. CENTRA: Just briefly.

24 REDIRECT EXAMINATION BY MR. CENTRA:

25 Q. Officer, you testified that you're driving through the

Decker - redirect - Centra

1 parking lot of Pioneer Homes?

2 A. Yes, sir.

3 Q. And that's the Radisson Courts included in there?

4 A. Yes, sir.

5 Q. Is Pioneer Homes a place where you frequently patrol?

6 A. Yes, sir.

7 Q. Is there a reason for that?

8 A. It's a high crime area. It's a gang neighborhood.

9 It's part of the, it's also owned by Syracuse Housing, and they
10 asked for our help.

11 Q. Syracuse Housing asked for your help in what way?

12 A. Enforcing their trespass list. They have a huge
13 trespass list of people they don't want on the property. And
14 if we find them on the property, they want us to arrest them.

15 Q. So you did simply, when you were driving through
16 Pioneer Homes, was flash a light on a vehicle, initially,
17 correct?

18 A. Yes.

19 MR. CENTRA: I have nothing further.

20 THE COURT: Mr. LoFaro, any other questions for
21 Officer Decker?

22 MR. LOFARO: Yes.

23 RECROSS-EXAMINATION BY MR. LOFARO:

24 Q. Again, I know it was quite sometime ago, but very
25 briefly, what did you say the aggregate weight was of the

Decker - recross - LoFaro

1 drugs that you had testified?

2 A. I believe it was four grams.

3 Q. Four grams?

4 A. Yes, sir.

5 MR. LOFARO: Okay. Thank you. No further
6 questions, Your Honor.

7 THE COURT: All set.

8 MR. CENTRA: Just one more.

9 THE COURT: Yes.

10 REDIRECT EXAMINATION BY MR. CENTRA:

11 Q. When you test the aggregate weight, is that just the
12 substance within the bags or do you test the weight of the
13 bags included within that?

14 A. The weight of the bag is included.

15 MR. CENTRA: Nothing further.

16 THE COURT: All set?

17 MR. LOFARO: Yes, Your Honor.

18 THE COURT: Thanks, Officer. You're all set.

19 Thank you for your time.

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Centra, your next witness?

22 MR. CENTRA: Officer Darrin Ettinger.

23 D A R R I N E T T I N G E R, called as a witness in behalf of
24 the People, being duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. CENTRA:

Ettinger - direct - Centra -

1 Q. Good morning, Officer.

2 A. Good morning.

3 Q. Would you state where you're employed for the record?

4 A. Syracuse Police.

5 Q. And what is your position there?

6 A. I work for the crime reduction team.

7 Q. And how long have you been in law enforcement?

8 A. Since May 8th of 2006.

9 Q. Can you describe what your general duties and
10 responsibilities are in your position right now?

11 A. For the crime reduction team, where we are a unit
12 that's specialized for high crime areas. Shots-fired. Simply
13 put, we do mostly drugs, guns and gangs.

14 Q. Now had you been involved in drug investigations
15 during the course of your career?

16 A. Yes.

17 Q. Approximately how many?

18 A. Hundreds.

19 Q. I am going to draw your attention to January 5th of
20 2016, do you recall this date?

21 A. Yes.

22 Q. And were you working in your capacity with the
23 Syracuse Police on that date?

24 A. Yes.

25 Q. Now at any point on this date, did you become involved

Ettinger - direct - Centra -

1 in a drug investigation?

2 A. Yes.

3 Q. Would you describe how you became involved in that
4 investigation?

5 A. I was working Unit 526 with my partner, Officer Decker.
6 We were patrolling -- patrolling around the Pioneer Homes.
7 It's a City of Syracuse Housing complex. As we were coming
8 into the hard walk of Radisson Court, we observed a vehicle
9 parked in one of the spots facing, it would be eastbound. It
10 was occupied by two males. As my partner illuminated the
11 vehicle, both males looked back at us. They had like a shocked
12 look on their face. They immediately turned back to their
13 laps. They started making all the furtive movements as if they
14 were attempting to hide something. So we pulled up. We exited
15 the vehicle. And we approached.

16 Q. And what did you do as you approached this vehicle?

17 A. Officer Decker approached the driver's side of the
18 vehicle. I approached the passenger side of the vehicle. As I
19 approached the passenger side, Officer Decker made me aware
20 that I observed a scale in plain view inside the vehicle. He
21 had asked the occupants of the vehicle if there was any drugs,
22 or if they were using drugs. And the front seat passenger, who
23 now I am next to talking with, stated that he had just done
24 cocaine in the vehicle.

25 Q. And after obtaining this information, what did you do

Ettinger - direct - Centra -

1 next during the course of your investigation?

2 A. I asked the front seat passenger to step out.

3 Q. What happened after that?

4 A. Front seat passenger identified as Willie Jones
5 complied. Stepped out. I secured him in handcuffs. And I
6 searched him for contraband. I did not find anything. At
7 which time we were at now like the back trunk area of the
8 vehicle. Standing there, Officer Decker asked the driver seat
9 occupant, found to be Tony Jennings, to step out of the
10 vehicle.

11 Q. And did you, were you able to get a look at the driver
12 of the vehicle?

13 A. Yes.

14 Q. Do you see him in court today?

15 A. Yes.

16 Q. Could you point to him and describe an article of
17 clothing that he is wearing?

18 A. Wearing the olive colored shirt.

19 THE COURT: Let the record reflect that the
20 Officer has identified Mr. Jennings.

21 Q. Now after you heard Officer Decker ask him to step out
22 of the vehicle, what did you do next during the course of this
23 investigation?

24 A. I am standing with Mr. Jones who is still in handcuffs
25 at the back of vehicle. Mr. Jennings and Officer Decker are at

Ettinger - direct - Centra -

1 the driver's side of the vehicle. So they are just, just
2 around the corner of the vehicle from me. And Officer Decker,
3 my partner, is conducting a search of Mr. Jennings. During the
4 search, Mr. Jennings flees from Officer Decker. And he runs
5 towards the sidewalk. So he is running eastbound, towards the
6 -- I guess up on the sidewalk. It's a very short distance.
7 And he gets tackled by Officer Decker. At which time he is
8 struggling.

9 I run up to help Officer Decker who is struggling with
10 Mr. Jennings. I strike Mr. Jennings in the side of the, right
11 side of the head with a closed fist, and then we struggle with
12 Mr. Jennings, and we force his hands behind his back and we
13 secure him in handcuffs. Then I immediately run back to Mr.
14 Jones, who is still standing at the back of the vehicle, or the
15 vehicle handcuffed. And he is saying, he was like, I am not
16 going anywhere. I am not going anywhere.

17 Q. So what did you do next after all this occurred?

18 A. After that, Officer Decker searched Mr. Jennings. We
19 performed warrant checks. And eventually, Mr. Jones was
20 released from the scene.

21 Q. And what did you do after that?

22 A. The vehicle, I searched the vehicle for contraband. I
23 also conducted, I am sorry, I completed an inventory of the
24 vehicle, prior to it being towed.

25 Q. And what if anything did you find in this vehicle?

Ettinger - direct - Centra -

1 A. The center console had \$150 inside of it which was
2 collected, seized for possible forfeiture.

3 Q. Did you find anything else in the vehicle?

4 A. I believe there was a cellphone of Mr. Jennings that
5 was also collected.

6 Q. And what did you do next during the course of your
7 involvement in this case?

8 A. After the vehicle was towed, we transported Mr.
9 Jennings to booking, and I completed the case.

10 Q. Do you recall if Mr. Jennings made any statements to
11 Officer Decker while in booking?

12 A. While we were filling out the arrest report, and the
13 arrest report includes name, date of birth, pedigree
14 information, also includes employment status, religious status.
15 When we asked about his employment status, he states he was
16 unemployed. He went on to explain that he had been working
17 construction, I believe, for Hotel Syracuse. But due to the
18 time of the year, he was unemployed. That he was selling crack
19 cocaine to supplement the money that he was now not getting
20 because he was unemployed.

21 Q. Officer, during the course of your involvement in this
22 investigation, did you find any drug-use paraphernalia at all?

23 A. No.

24 Q. Now do you go through training in how to, I guess,
25 conduct yourself during an investigation of this sort, police

Ettinger - direct - Centra -

1 training?

2 A. Yes. During the police academy, we have crimes in
3 progress and that gives us scenario-based experiences.

4 Q. Now did you follow the requisite police procedure that
5 you had been trained in when conducting this investigation?

6 A. Yes.

7 MR. CENTRA: I have no further questions. Thank
8 you, Officer.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. LoFaro, cross-examination for
11 Officer Ettinger?

12 CROSS-EXAMINATION BY MR. LOFARO:

13 Q. Good morning, Officer. How are you?

14 A. Good. How are you?

15 Q. Good. Thank you. I am going to ask you the same
16 question that I asked your partner with regard to the vehicle
17 itself. You entered that parking lot, I know it's within his
18 testimony, and the district attorney has presented this to be
19 a high crime neighborhood?

20 A. Yes.

21 Q. So, I understand that. When you pulled into that
22 parking lot, was there a crime in progress that you could see?

23 A. A crime in progress that I could see, no.

24 Q. Any type of disturbance in that parking lot?

25 A. No.

Ettinger - cross - LoFaro

228

1 Q. When you testified that there was a suspicious
2 vehicle, what was the first thing that caused, when did you
3 draw that conclusion that that vehicle was suspicious?

4 A. I believe that as we were coming into the parking lot,
5 there are other cars parked in there. It's not common for
6 people to just to sit in the parking lot in the vehicle. So
7 that alone is suspicious. And then when you illuminate
8 somebody, and they see you and they immediately turn down and
9 begin to make furtive movements, as if they were trying to hide
10 something. I mean, that raises our suspicions even more.

11 Q. So just the mere fact that there are two gentlemen
12 sitting in a vehicle, in a parking lot, in and of itself gives
13 rise to that being a suspicious vehicle, that's enough?

14 A. It gives rise to us to inquire. This is a City of
15 Syracuse public housing complex. It is inundated with criminal
16 activity. Shots-fired, homicides, larcenies. The City of
17 Syracuse Housing complex has even asked us to approach people,
18 make sure they live there. We are allowed to approach cars,
19 approach people inside the complex itself, and see to make sure
20 if they live there.

21 Q. But as you approached the vehicle, all you really saw
22 was two guys sitting in a car, correct?

23 A. A-hum.

24 Q. With regard to these furtive movements, again, I will
25 ask you the same question that I asked Officer Decker, you

Ettlinger - cross - LoFaro

1 haven't inventoried the vehicle, and you both testified that
2 it appeared by their furtive movements that they were
3 attempting to secrete something, is that correct?

4 A. Could -- yes.

5 Q. Now, a small amount of money was recovered? A small
6 amount of cocaine was recovered from the pocket? There was a
7 scale, sitting on the console, correct?

8 A. Yes.

9 Q. So it's your testimony that they were moving as though
10 they were attempting to secrete something. But after you
11 inventoried the vehicle, you testified there was no drug
12 paraphernalia. All you found was the drugs on the person, and
13 the other thing on the console that they, of course, the small
14 scale that they obviously didn't attempt to secrete that. If
15 they had even known you were there, so when you inventoried
16 that vehicle, they hadn't secreted anything at all, had they?

17 A. They could have had drugs in the pocket, I mean. I can
18 go into what I believe could be happening there.

19 Q. No, we would rather not engage in --

20 A. You're saying: Nothing secreted. I am saying that he
21 had drugs in his pocket. There was a scale here. They didn't
22 have much time by the time we saw them, we pulled up and jumped
23 out. They are not doing this slowly.

24 Q. Yes?

25 A. If this had been a handgun or something, we were moving

Ettlinger - cross - LoFaro

230

1 up quickly. Obviously, the scale was in plain view. And he
2 had, not a small amount of drugs, but a substantial amount of
3 drugs on him.

4 Q. Okay. Now I understand as you said there was no
5 disturbance, it wasn't a crime in progress?

6 A. Right.

7 Q. When you pulled into the parking lot, admittedly,
8 there was no crime in progress. The fact that there were two
9 gentlemen sitting in a vehicle, in and of itself raised some
10 type of an eyebrow to you. When you pulled into the parking
11 lot, behind them, were they free to go or did you block them
12 in?

13 A. We did not block them in. We pulled up so if they were
14 parked forwards, like facing -- so nose into the spot. We
15 pulled up just before them, so we were not blocking them in.

16 Q. So at that point in time could they have been trying
17 to exit the vehicle and go into the apartment complex and
18 watch a ball game?

19 A. Absolutely.

20 Q. Okay.

21 A. Would we still have tried make to contact with them?
22 Absolutely. We do this all the time. We do this repeatedly
23 all the time. In all of the -- in most of our, if not all of
24 the Syracuse City housing complexes, we go up to cars: Do you
25 live here? Yes, I do live here. Could I see your ID, please?

Ettinger - cross - LoFaro

1 Yes. Show your I.D., they live right here, and they are gone.

2 Q. Certainly, now that's a far cry from coming up on a
3 vehicle and shining a spotlight in it, isn't it?

4 A. It's all we could see in the vehicle. If it was an
5 empty vehicle, I wouldn't walk up -- I walk up to a vehicle
6 that people are in.

7 Q. Correct. I understand that.

8 A. That's what I am saying.

9 Q. But, do you understand there is a Fourth Amendment
10 right that people are entitled to as well, correct, now this
11 is in the passenger compartment of that vehicle, correct?

12 A. No. He was in the driver's seat. And the front seat
13 passenger is in the passenger seat.

14 Q. Correct?

15 A. Driver's side. Passenger seat. (Indicating.)

16 Q. Correct. So, they were in that vehicle, doors closed,
17 correct?

18 A. Yes.

19 Q. So that also is different than the inquiry with regard
20 to somebody who is a pedestrian who is on a public walkway?

21 A. I don't -- I mean, I am not going to sit here and try
22 to say there was a difference between that, because anybody
23 could drive their car into Radisson Court and park there, and
24 sell drugs, or have a gun, or do violence. So I mean, in both
25 respects, if you're outside of the vehicle, well, you're just a

Ettinger - cross - LoFaro

1 bit -- if you're inside a vehicle, our inquiry is to make sure
2 that you have a reason to be there, that you live there.

3 Q. So, so, is it your testimony that Mr. Jennings and the
4 other person in his vehicle aren't entitled to the same right
5 to privacy as someone in a non-crime area?

6 MR. CENTRA: Objection, Your Honor. You're
7 asking him to testify to a legal basis.

8 THE COURT: Sustained, sustained.

9 BY MR. LOFARO:

10 Q. Okay. With regard to that scale that was inventoried,
11 do you recall who took possession of that scale, was it you or
12 was it --

13 A. Officer Decker.

14 Q. Officer Decker? Okay. And are you aware of any
15 testing that was done to the scale with regards to residue
16 that may not have been on it?

17 A. We didn't have nic-wipes available for the testing. We
18 collected it, and sent it to the lab. Whether or not a lab
19 tested it, I am not sure. But there was a white residue on the
20 surface of the scale.

21 Q. Okay. All right. That cocaine that has been entered
22 as an exhibit, how was that packaged?

23 A. Freestyle.

24 Q. Was it, just a yes or no, in one single bag?

25 A. Yes, one section of knotty plastic.

Ettinger - cross - LoFaro

1 MR. LOFARO: Okay. Thank you, Officer. No
2 further questions.

3 THE WITNESS: Thank you, sir. I appreciate it.

4 THE COURT: Anything else?

5 MR. CENTRA: Nothing further.

6 THE COURT: Thanks, Officer. You're all set.

7 THE WITNESS: Thank you, sir. I appreciate it.
8 Thanks, guys.

9 (Witness off witness stand.)

10 THE COURT: Mr. Centra, your next witness?

11 MR. CENTRA: Jennifer Wilson.

12 J E N N I F E R W I L S O N, Called as a witness in behalf
13 of the People, being duly sworn, testified as follows:

14 THE COURT: Miss Wilson, good morning.

15 THE WITNESS: Good morning.

16 THE COURT: Mr. Centra, when you're ready.

17 MR. CENTRA: Thank you.

18 DIRECT EXAMINATION BY MR. CENTRA:

19 Q. Good morning.

20 A. Good morning.

21 Q. Would you state for the record where you're employed?

22 A. I am employed at the Onondaga County Center for
23 Forensic Sciences.

24 Q. And is this an accredited facility?

25 A. Yes, it is.

Wilson - direct - Centra

1 Q. Can you explain how a lab becomes accredited?

2 A. Accreditation process involves a team of usually
3 between four and six inspectors that come into the laboratory.
4 They go through all aspects of the lab, including training,
5 personnel, our procedures. And they evaluate everything that
6 we do for our analysis in the building.

7 Q. Now could you state what your occupation at the lab
8 is?

9 A. I am a forensic chemist.

10 Q. And how long have you been employed in this capacity?

11 A. I have been employed as a forensic chemist for
12 approximately 16 or 17 years. Previous to that, I was a
13 laboratory technician, still within the drug unit.

14 Q. Would you describe what your duties are in your
15 position?

16 A. My primary duties are the analysis of evidence that is
17 turned into the laboratory by various police agencies to
18 determine whether they contain, excuse me, a controlled
19 substance or marijuana.

20 Q. Now what type of schooling or training have you
21 received for this position you're employed at?

22 A. I have two bachelors degrees from SUNY Oswego. The
23 first was in public justice, with a minor in forensic science.
24 And the second is in biology.

25 I have attended numerous trainings including one at the

Wilson - direct - Centra

1 FBI academy in Quantico, Virginia. And I had extensive
2 on-the-job training before I began any analysis.

3 Q. Now do you read any scientific literature to keep
4 yourself up-to-date in your field?

5 A. Yes, I do.

6 Q. Have you ever taught courses and lectured in your
7 field?

8 A. Yes, I do.

9 Q. Can you describe what your day-to-day duties are?

10 A. Day-to-day, my primary duties are the analysis of
11 evidence to determine whether or not they contain a controlled
12 substance.

13 Q. Now have you had the occasion to chemically analyze
14 substances to determine whether the substance is or contains a
15 controlled substance?

16 A. Yes, I have.

17 Q. Approximately how many times?

18 A. Thousands.

19 Q. Have you had the occasion to chemically analyze
20 substances to determine whether the substance is or contains
21 cocaine?

22 A. Yes, I have.

23 Q. And how many times have you done that?

24 A. Thousands.

25 Q. Is cocaine a controlled substance?

Wilson - direct - Centra

236

1 A. Yes, it is.

2 Q. And is it also a narcotic drug?

3 A. Under the law of New York State, yes, it is.

4 Q. Now do you make these analyses as regular part of your
5 duties?

6 A. Yes, they are.

7 Q. Now have you had the occasion to testify in the courts
8 of New York in this area before?

9 A. Yes, I have.

10 Q. Approximately how many times?

11 A. Approximately thirty.

12 Q. Now any point did you become involved in a case
13 involving an individual by the name of Tony Jennings?

14 A. Yes, I did.

15 Q. Now what was your assignment in regards to this case?

16 A. My assignment was to analyze a piece of evidence that
17 was turned into the laboratory.

18 Q. I am going to show you what has been marked and
19 entered as Grand Jury Exhibit 2. I am going to ask you if you
20 recognize this exhibit?

21 A. Yes, I do.

22 Q. Is that the same one that you were asked to analyze?

23 A. Yes, it is.

24 Q. How were you able to identify this item?

25 A. My initials, the date and time that I opened the

237
Wilson - direct - Centra

1 evidence bag, are clearly on the bag, and my initials and some
2 other markings on the inner packaging.

3 Q. Do you recall when you marked this item?

4 A. May 5th 2016.

5 Q. When did you first come in possession of Exhibit 2?

6 A. May 2nd 2016.

7 Q. And when you first were assigned to this, where did
8 you initially get this item from?

9 A. I got the piece of evidence from our evidence intake
10 section in the laboratory.

11 Q. Is that a secure area?

12 A. Yes, it is.

13 Q. Who has access to it?

14 A. The evidence intake staff and approximately three
15 supervisors.

16 Q. Now is Exhibit 2 in substantially the same condition
17 now as when you last saw it?

18 A. Yes, it is.

19 Q. What did you do with Exhibit 2 after you received the
20 item from the evidence intake area?

21 A. I brought it back to my area of the laboratory, and
22 stored it until I began my analysis.

23 Q. Did anyone else have custody of Exhibit 2 from the
24 time that you received the item from the evidence intake area
25 until you analyzed it?

Wilson - direct - Centra

1 A. No, they did not.

2 Q. And could you describe what the condition of Exhibit 2
3 was when you first saw the item?

4 A. It was a knotted piece of plastic which indicated a
5 chunky substantial.

6 Q. Is that plastic that you just described still enclosed
7 in Exhibit 2?

8 A. Yes, it is.

9 Q. Now, when you received Exhibit 2, did you break the
10 seal on Exhibit 2?

11 A. Yes, I did.

12 Q. When did you do that?

13 A. On May 5th 2016.

14 Q. And where did you do that?

15 A. In my work space in the laboratory.

16 Q. Now when you opened Exhibit No. 2, what did you first
17 do with this item?

18 A. The first thing I did was to take out the chunky
19 material and the packaging. I weighed them together. Then I
20 emptied out the chunky material and I weighed just the
21 packaging so that I could get the weight of just the chunky
22 material.

23 Q. And what was the result of the weight of that chunky
24 material?

25 A. The weight was 2.576 grams.

Wilson - direct - Centra

239

1 Q. And that's not including the packaging material that
2 you described?

3 A. Correct, it's just the chunky material.

4 Q. Now after weighing this material, what did you do
5 next?

6 A. The next thing I did was to begin my analysis. The
7 first part of that is to do a color test known as a Scott color
8 test. This is a three-step process. If all three steps are
9 positive, it's indicative for the presence of cocaine.

10 Q. And can you describe exactly what you did while
11 testing this item?

12 A. I took a very small amount of chunky material and I put
13 it into a glass tube. I added a few drops of a Scott reagent.
14 I looked for a blue precipitate to form. Then I added a few
15 drops of concentrated hydrochloric acid. The blue precipitate
16 dissolved. I then added a small amount of chloroform and I
17 looked for pink or blue color. If all three of those steps are
18 positive, then it is indicative for the presence of cocaine.

19 Q. Was this indicative for cocaine?

20 A. Yes, it was.

21 Q. Now after this test, did you do any other additional
22 testing to this item?

23 A. Yes, I did.

24 Q. And what additional testing did you do?

25 A. The next test I did involves some instrumentation known

Wilson - direct - Centra

240

1 as gas chromatography mass spectrometry. These are two
2 instruments that are interfaced together that separate,
3 tentatively identify the components in the sample. I then
4 reviewed that data and made my determination about what the
5 substance is.

6 Q. And can you explain exactly what you did in regards to
7 this testing with Exhibit No. 2?

8 A. I took a very small amount of the sample. I put it
9 into a glass vial. I then filled the glass vial with methanol.
10 I then placed that sample on the instrument, and the
11 instrument, then it was then run through the instrument.

12 Q. And what was the result of this testing?

13 A. The chunky material is cocaine.

14 Q. And did you do any further testing?

15 A. I did.

16 Q. And what did you further test for?

17 A. I did a quantitation on the sample. I, by performing a
18 quantitation, I can tell the pure amount of cocaine that's in
19 the sample.

20 Q. And how did you do this?

21 A. I used an instrument known as a gas chromatograph flame
22 ionization detector.

23 Q. Can you describe what you did when testing Exhibit 2
24 in this matter?

25 A. I took the chunky material, and the first thing I

Wilson - direct - Centra

1 needed to do was to grind it up so that it's powdery, so I had
2 a homogenous sample. I then made out three separate Aliquoits.
3 I ran those three samples from each of those Aliquoits. And I
4 used that data to make my determination. A-l-i-q-u-o-i-t-s.

5 Q. What were the results of this testing?

6 A. The sample was 49 percent pure cocaine.

7 Q. Were you able to determine how many milligrams of
8 cocaine were enclosed within that sample?

9 A. Yes, I was.

10 Q. How were you able to do that?

11 A. By performing a calculation.

12 Q. Can you describe how you did that?

13 A. I multiplied the weight of the chunky material by the
14 purity to determine that there is 1,262 milligrams of cocaine.

15 Q. And are these tests that you just described here today
16 recognized in the scientific community for cocaine detection?

17 A. Yes, they are.

18 Q. So after you did this test that you last testified to,
19 what did you do next during the course of your analysis?

20 A. I separated out what is now powdery material from the
21 package. I resealed it in the evidence bag. I also wrote a
22 report reporting my findings.

23 Q. And from these tests that you performed, were you able
24 to come to a conclusion as to what the substance is or
25 contained in Exhibit 2, was?

Wilson - direct - Centra

1 A. Yes, I did.

2 Q. And what was your conclusion?

3 A. It is cocaine.

4 Q. Can you state the basis for your opinion here?

5 A. Based on my experience, training, and education.

6 MR. CENTRA: I have no further questions.

7 THE COURT: Okay. Mr. LoFaro, cross-examination
8 for Miss Wilson?

9 MR. LOFARO: Yes.

10 CROSS-EXAMINATION BY MR. LOFARO:

11 Q. Good morning, Miss Wilson.

12 A. Good morning.

13 Q. How are you?

14 A. Good.

15 Q. I hope you can bear with Alexander Pope, that a little
16 learning is a dangerous thing. I may bumble a bit. You're
17 certainly the expert. Just a few, a few questions with regard
18 to some of the tests that you were talking about. You stated
19 that you did a gas -- I am sorry, what was the first test you
20 said you performed?

21 A. The Scott colored test?

22 Q. Oh, so, did you do a color test?

23 A. Yes, sir.

24 Q. And which color test was that?

25 A. The Scott.

Wilson - cross - LoFaro

1 Q. Okay. And you did a gas chromatography test?

2 A. Gas chromatography mass spectrometry, yes.

3 Q. I am sorry. Did you say infra residue spectrometry
4 test as well or not?

5 A. I used G.C.M.S. I.D. I did not use infrared.

6 Q. Okay. Now, why did you not conduct that test, just
7 out of curiosity?

8 A. That test is used to determine the base form of the
9 cocaine, which is not required for this court. That is used
10 primarily for Federal Court.

11 Q. Okay. It is, it is true, is it not, that the
12 combination of the Y. G.C.M.S. and the I.R. are reported to be
13 the highest, highest, highest confidence identification?

14 THE COURT: Hold up a second. Folks, can you
15 hear the questions? Yes?

16 JUROR: No.

17 THE COURT: Speak up a little, John.

18 MR. LOFARO: Okay, Judge.

19 Q. The G.C.M.S. (GC/MS) and I.R., is that the best way to
20 tell what actually is in there?

21 A. GC mass-spec is pretty much infallible.

22 Q. Okay. Isn't it true that there is no one infallible
23 system in a laboratory?

24 A. True, there is no infallible system.

25 Q. Let's see. Now, I know that you stated you got this

Wilson - cross - LoFaro

1 from the lab. Where is that laboratory located that you
2 originally received those drugs from?

3 A. Are you referring to the evidence intake section?

4 Q. Yes.

5 A. It is part of our laboratory. It's on the same floor
6 that I work in.

7 Q. And where is that?

8 A. It's at this Onondaga County Center for Forensic
9 Sciences.

10 Q. Okay. Now, is all of that evidence tagged and dated
11 and timed as to where it came from, how it found its way to
12 you, who brought it there, all that stuff recorded?

13 A. Yes, it is.

14 Q. Okay. Do you have any records of how that came to you
15 or when it was when it was delivered to you, and by whom?

16 A. I do not have those records.

17 Q. Okay. And prior to those drugs that you tested
18 landing in your lab in your facility, do you know, do you have
19 any idea -- you may not, don't guess, if you know -- do you
20 know where they were prior to reaching your laboratory?

21 A. Before they got to our evidence intake section, no, I
22 do not.

23 Q. Okay. When you first came on those drugs, was there a
24 label on them?

25 A. On there is a label on the evidence bag.

Wilson - cross - LoFaro

1 Q. On the package evidence itself, yes?

2 A. On the evidence bag, yes.

3 Q. And what did that, what did that bag say?

4 A. The white labeling?

5 Q. Yes.

6 A. There are agency numbers on there. Usually the
7 officers that brought the evidence or collected the evidence,
8 and there is usually brief description on that label.

9 Q. I know you obviously, I wouldn't ask you to guess how,
10 it's prior to reaching you, but once it reaches your
11 laboratory, how are those drugs stored?

12 A. They are stored in the evidence intake section of our
13 laboratory which is a secure area.

14 Q. In addition to being secure, what other controls do
15 they have other than it just being secured? What temperature
16 are they stored at? Any specific temperature?

17 A. They are, this evidence would have been stored just at
18 room temperature.

19 Q. What safeguards are taken so these drugs that are
20 stored in your lab aren't subject to high temperature
21 melt-down points, bacterial contamination, and things like
22 that, residue materials on some of the instruments that you
23 use? What are the safeguards that you put into place so none
24 of those things happen?

25 A. The laboratory is a secure building. You can't just

Wilson - cross - LoFaro

246

1 walk into the laboratory. You have to have access or be given
2 access into the building. The same goes for the evidence
3 intake section. We also have numerous cameras recording who
4 comes into the laboratory on a daily basis, as far as to make
5 sure that there was no contamination. Was that your question?

6 Q. Yes. Yes.

7 A. Before the sample was run on the G.C. mass-spec, a
8 blank was run before it, so that I knew there was, that there
9 was nothing on the instrument or in the column of the
10 instrument before that sample went through the instrument.

11 Q. Okay. And your laboratory, your laboratory itself, is
12 that from time to time subject to an independent inspection by
13 the State or the County?

14 A. It is done by the State and it is the inspected by
15 ASCLD lab.

16 Q. Now with regard to your results, again, I know you
17 said that you believe that process that you used to be nearly
18 infallible, but isn't it true that you could get false
19 positives and false negatives also?

20 A. After my examination, it goes through a series of
21 reviews, not only by myself but by other peers within the
22 laboratory. If there was any type of issue, that would have
23 been found and addressed then.

24 MR. LOFARO: Okay. All right. Thank you very
25 much. I have no further questions, Your Honor.

Wilson

1 THE COURT: Mr. Centra?

2 MR. CENTRA: I have nothing further.

3 THE COURT: You're all set, ma'am.

4 THE WITNESS: Thank you.

5 THE COURT: Could I please have counsel at the
6 Bench for a moment?

7 (Also present at the Conference at Bench is the defendant.)

8 THE COURT: Folks, I was just questioning
9 counsel. I know Mr. Centra has another witness ready to
10 go. They assure me, we will be done by 12:30. Then we can
11 take our lunch break. So if you folks are willing, we will
12 go forward with one more witness. Does that sound all
13 right? All right.

14 Mr. Centra, do you want to call your witness for
15 us?

16 MR. CENTRA: Next witness is Sergeant David
17 Proud.

18 D A V I D P A T R I C K P R O U D, Called as a witness in
19 behalf of the People, being duly sworn, testified as
20 follows:

21 THE COURT: Good afternoon, Sergeant.

22 THE WITNESS: Good morning, sir.

23 DIRECT EXAMINATION BY MR. CENTRA:

24 Q. Good morning.

25 A. Good morning.

Proud - direct - Centra

1 Q. Would you state where you're employed, for the record?

2 A. The City of Syracuse Police Department.

3 Q. And how long have you been in law enforcement?

4 A. For approximately 28 years.

5 Q. And what is your position with Syracuse Police?

6 A. I am currently assigned as a detective sergeant within
7 the special investigations division.

8 Q. And what is the special investigations division?

9 A. It's a unit, thank you, it's a unit that's tasked with
10 all levels of drug and weapons-related cases. The cases range
11 from street corner quality of life type issues, the
12 investigation of persons that were loitering on the street for
13 the purpose of using and selling illicit drugs and possessing
14 weapons. To case investigations, which would be more targeted
15 investigation, which is looking at a particular individual,
16 maybe a particular group, or a particular location that's
17 involved in the sale of narcotics or illicit drugs, or weapons
18 possession. As well as undercover operations, and long-term
19 eaves-droppings or wiretap investigations.

20 Q. Could you describe what your specific duties and
21 responsibilities are there?

22 A. My duties are to oversee all those operations, as well
23 as field calls from the District Attorney's office, or calls
24 from citizens that are looking to act as confidential
25 informants, or that are providing information to the police

Proud - direct - Centra

1 department, as well as setting up debriefing and monitoring the
2 daily activities of the detectives that are conducting all
3 those previously mentioned types of investigations.

4 Q. Sergeant, in your years in law enforcement, have you
5 received any types of narcotics training?

6 A. I have. I received my initial training in the Onondaga
7 County Police Academy, when I was hired as a police officer.
8 And from that point forward, I spent approximately all but two
9 years of my 28 years involved in narcotics enforcement.

10 So over the course of those years, I received yearly
11 training as far as updates, legal updates, updates on drug
12 trends, as well as certification in the use of field test kits.
13 And I am currently the lead instructor for the Syracuse Police
14 academy for all drug-related topics and informant management,
15 as well as an assistant instructor for the Onondaga County
16 Sheriff's Department, the Drug Enforcement Administration, as
17 well as Syracuse University.

18 Q. Now how many drug investigations have you personally
19 been a part of?

20 A. I will say well over a thousand.

21 Q. And how many drug arrests have you made?

22 A. Hundreds.

23 Q. How many arrests have you made involving the drug
24 cocaine?

25 A. Again, I would say hundreds.

Proud - direct - Centra

250

1 Q. Okay. And have you arrested individual users of the
2 drug cocaine?

3 A. I have.

4 Q. Have you arrested people who sell cocaine?

5 A. I have.

6 Q. Now have you ever worked undercover as part of your
7 investigations?

8 A. Well, assigned to the investigation, special
9 investigations division, I personally, approximately two
10 and-a-half years working solely in an undercover capacity.

11 Q. While you were working undercover, did you purchase
12 drugs?

13 A. I did.

14 Q. Did that involve cocaine?

15 A. It did.

16 Q. And have you worked with confidential informants
17 before?

18 A. I have. While assigned as an investigator, police
19 officer, and detective within the special investigations
20 division, and on a more limited basis as a detective sergeant,
21 it would be part of the daily duties to work with confidential
22 informants. As a supervisor within the special investigations
23 division, I work with the detectives that are working with the
24 informants, and basically give them guidance on how to work
25 with the informants.

Proud - direct - Centra

251

1 Q. So, have, well, while working with confidential
2 informants, have they made controlled drug buys at your
3 request?

4 A. They have.

5 Q. Does that include controlled buys for cocaine?

6 A. It does.

7 Q. And have you previously testified in courts as an
8 expert witness before?

9 A. I have. I have testified in the Onondaga County
10 superior courts as well as the Federal court system.

11 Q. Now in your training and experience in supervising and
12 investigation of hundreds of crimes, do you know generally how
13 much cocaine an individual using the drug for personal use
14 would have on their person?

15 A. Yes. You're talking about a 10th of a gram, two 10ths,
16 maybe three 10ths of a gram would be the amount that a strictly
17 user is going to possess.

18 Q. And in your training and experience, what is the
19 street value of an individual dose of cocaine?

20 A. A 10th of a gram is going to go for approximately 10
21 dollars. That's notwithstanding supply and demand elements
22 that may come in, I am -- myself as a customer, that's coming
23 from the deep suburbs, and the dealer knows this. That will
24 oftentimes be supplied. So that 10th of a gram or \$10 bag of
25 cocaine is now going to become a \$30 or \$40 bag of cocaine for

Proud - direct - Centra

252

1 the same amount.

2 Q. Now, do you know approximately how many individual
3 doses of cocaine would be in 2.5 grams of cocaine?

4 A. Yes. You would be talking somewhere in the area of 25
5 individual doses. Again, notwithstanding, you know, it could
6 be more if I am breaking off smaller pieces for unknown
7 customers.

8 Q. And do you know approximately what the street value of
9 that amount of cocaine would be?

10 A. You're going to be talking a minimum of two hundred and
11 fifty dollars (\$250).

12 Q. Now is there usually a difference between the
13 packaging of cocaine between an individual user and a person
14 selling the drug?

15 A. Yes. Usually, a person that has purchased crack
16 cocaine for personal use, they may have it loose in their
17 pocket, just a small rock. Or it could be packaged in a folded
18 up piece of paper, small section of plastic. As opposed to
19 dealers, when they are holding. The common trend in this area
20 is for dealers to hold what's referred to as freestyle crack
21 cocaine. What that is is one bulk amount of product that's
22 held. Then any amount that's desired by a customer can be
23 broken off and provided. If, as a customer, if I have six
24 dollars to spend or I have thirteen dollars to spend, the
25 dealer can break off that amount of product. It also makes the

Proud - direct - Centra

253

1 product more readily disposable and easier to hide.

2 With our fine upstate New York weather, it's usually
3 raining or snowing, so if you were engaged in a foot pursuit
4 with a police officer, or a car chase, you can very easily just
5 bring over the bag, discard the substance. Hopefully it will
6 be destroyed by the elements or traffic or easily lost.

7 Q. Now in your training and experience investigating
8 these, the drug-related crimes, cocaine that is purchased or
9 sold, is it normally 100 percent of the drug cocaine the
10 substance that is possessed?

11 A. No, it's not.

12 Q. Now how are you, you discussed that you arrested and
13 investigated individuals who use the drug and individuals who
14 sell the drug, how are you able to determine that individual
15 is possessing the drug just for their personal use?

16 A. Basically through conversations. And it could be --
17 there are a multiple of different scenarios could be presented.
18 But when we are conducting an investigation, we may be watching
19 a particular dealer, and we may be watching all the customers
20 approach. The customers come and go, while the dealer may stay
21 put. Or they may be mobile, going to different locations. But
22 the customers will come to the location and then depart. Then
23 they are stopped and found in possession of a small amount of
24 products. Again, dependent upon the scenario, we might
25 actually take an affidavit and we might have them do showup

Proud - direct - Centra

254

1 identifications. All dependent upon what the investigation is
2 that day.

3 Q. And is there anything that could be on the possession
4 of a person accused of selling a drug, that would be
5 indicative of intent to sell?

6 A. Yes, there is multiple tools of the trade, if you will,
7 that are indicators of possession with the intent to sell.
8 That would be: Multiple cellular phones. Digital scales.
9 Packaging materials. Large sums of currency, with no
10 legitimate means of employment.

11 MR. CENTRA: I have no further questions for this
12 witness. Thank you, Sergeant.

13 THE COURT: Okay, Mr. LoFaro, cross-examination
14 for Sergeant Proud?

15 MR. LOFARO: Yes.

16 CROSS-EXAMINATION BY MR. LOFARO:

17 Q. Good afternoon, Sergeant.

18 A. Good afternoon.

19 Q. How are you?

20 A. Goods. Thanks.

21 Q. Sergeant, 2.7 grams of cocaine, would you call that a
22 bulk amount?

23 A. Yes, I would.

24 Q. You would? Would you call that a small amount or
25 would you call that a minute amount of cocaine?

Proud - cross - LoFaro

255

1 A. I wouldn't call it a minute amount, by any stretch, no.

2 Q. Small?

3 A. Relative to?

4 Q. Generally speaking, reasonable man standard?

5 A. It's an amount that it's small, compared to someone's
6 in possession of a kilo. But it's not small in possession of
7 someone that's got a 10th of a gram.

8 Q. Again, you're educating me, because I am not sure how
9 this could be done. But how is an amount that small broken up
10 in individual doses?

11 A. As I had previously stated, it's just broken off the
12 bulk amount and provided to the customer. Broken off with a
13 fingernail. Broken off with a razor blade. Broken off by
14 anything.

15 Q. Often times, cocaine is packaged individually for sale
16 as well, isn't it?

17 A. That's not really the consistent trend at this point.
18 Fifteen years ago or so, that was the common trend. But
19 persons involved in the street level sale of narcotics have
20 been educated through other dealers, through the legal process,
21 to attempt to avoid an intent to sell charges. They are no
22 longer packaging in small ziplock bags in those individual 10th
23 of a gram amounts. The common trend at this point is to hold
24 it freestyle, to avoid that automatic charge.

25 Q. Which ultimately, they are being charged with anyway,

Proud - cross - LoFaro

256

1 with what is now known as what has been created as a different
2 area altogether, allowing an opportunity to make more arrests
3 called freestyle, correct?

4 A. I can't say correct one way or the other. I am not
5 sure what you're asking the question?

6 Q. When you said, when you said that 2.7 grams could be
7 broken up in individual doses, how many individual doses did
8 you estimate that to be?

9 A. You're talking 2.7 grams. It would be approximately 27
10 individual doses.

11 Q. Okay. Like a 28-pack of Budweiser, but that's
12 personal use, isn't it?

13 A. I couldn't tell you that. If you're working at a bar
14 and have 28 Buds, I assume you may be selling it.

15 Q. You're asking, you always use the word "bulk." You
16 used that more than once. People do have things in volumes of
17 more than 25, 26 doses, it could be for personal use as well,
18 couldn't it?

19 A. If they are involved in the sale, yes, based on 27
20 years of Drug Enforcement experience, that would not be
21 consistent with personal use.

22 Q. But you couldn't be positive of that, could you not,
23 not with regard to intent, because only one person knows what
24 an intent is, that's the person whose head is attached to the
25 crime, am I correct?

Proud - cross - LoFaro

257

1 A. Again, I am not?

2 Q. You're just speculating with regard to what his intent
3 may or may not have been, correct?

4 A. No, I am not speculating. I am making a comment based
5 on 27 years of narcotics enforcement, and talking to hundreds
6 of drug dealers and drug users.

7 Q. But that is your opinion and nothing more, correct?

8 A. That's correct, is my opinion.

9 MR. LOFARO: Thank you, Sergeant. I appreciate
10 it.

11 THE COURT: Anything else, Mr. Centra?

12 MR. CENTRA: No, Your Honor.

13 THE COURT: Thanks, Sergeant.

14 (Witness off witness stand.)

15 THE COURT: Mr. Centra, any other witnesses or
16 proof on behalf of the People?

17 MR. CENTRA: No, Judge. The People rest at this
18 time.

19 THE COURT: All right. Ladies and gentlemen, the
20 People have rested their direct proof, which is perfect
21 timing for us, because it's a good time to break for lunch.
22 You haven't heard the entire case. You haven't heard the
23 summations of counsel. You haven't heard the law. So, I
24 am going to tell you to enjoy your lunch. We will have you
25 back here, we will start back up at 1:30. We have to take

- People rest -

258

1 some legal matters outside your presence, at this point,
2 anyways.

3 So, basically, don't talk about the case amongst
4 yourselves. Again, there is more that's going to come, as
5 far as at least summation of counsel and the law. We may
6 hear some witnesses on behalf of the defense. I don't know
7 that. So don't talk about the case among yourselves. Let
8 me know if anybody does try to talk to you about the case.

9 And enjoy your lunches. And we will have you
10 back here. And we will start back up at 1:30, okay. Thank
11 you.

12 (Jury left the courtroom at 12:23 p.m.)

13 THE COURT: We are outside the presence of the
14 jury, with both counsel and Mr. Jennings.

15 And first, you were going to remind me this
16 morning, Mr. Centra, you had turned over your Rosario to
17 Mr. LoFaro. That was done, correct?

18 MR. CENTRA: Yes, Your Honor.

19 THE COURT: Done before we started opening
20 statements, correct?

21 MR. LOFARO: Correct, Judge.

22 MR. CENTRA: Judge, that was done yesterday after
23 court.

24 THE COURT: All right. Mr. LoFaro, are you
25 acknowledging that, correct?

- Motion - LoFaro -

259

1 MR. LOFARO: I do, Your Honor.

2 THE COURT: The People have rested their case.

3 Mr. LoFaro, is there a motion?

4 MR. LOFARO: Yes, Judge. I move that the charges
5 be dismissed. I don't think that they have shown there was
6 a chain of custody with regards to the drugs themselves.
7 And I don't think that they proved each and every element
8 of the case as they are required.

9 THE COURT: Mr. Centra?

10 MR. CENTRA: Judge, we heard from four witnesses
11 this morning. Two of them being officers that were
12 involved in the actual arrest of Mr. Jennings, who both
13 testified that on January 5th 2016, at the 100 block of
14 Radisson Court in Syracuse. They approached the vehicle,
15 that the defendant was seated in. During the course of
16 their investigation they searched Mr. Jennings, and on his
17 person they found a bag of cocaine. On top of that they
18 found further evidence as Detective or Sergeant Proud
19 showed was indicative of sale. A scale, cash, multiple
20 cellphones. That cocaine that was found on Mr. Jennings
21 was in fact brought to the lab and tested by Jennifer
22 Wilson, who in fact told us that there was 2.57 grams of
23 cocaine, aggregate weight. That the substance in fact did
24 test positive for cocaine. And that in fact, a substance
25 as a whole contained I believe it was 1,267 milligrams of

- Motion - LoFaro -

260

1 cocaine within there. Which meets all the elements in the
2 crimes alleged. Therefore, I would ask for you to deny the
3 defense's motion.

4 THE COURT: With regards to the two counts,
5 criminal possession of controlled substance in the third
6 degree, and criminal possession of controlled substance in
7 the fifth degree, I believe the People have made out a
8 prima facie case as to each and every one of the elements
9 of those two counts.

10 So, I will deny the defendant's motion at this
11 time for a trial ordered dismissal.

12 Mr. LoFaro, we are going to resume at 1:30. Do
13 you have witnesses for us?

14 MR. LOFARO: I do, Your Honor. I have Mr.
15 Jennings and I have his employer, if his employer will be
16 here with us. I am not sure if he was going to testify or
17 not. If he is willing to be here this afternoon, I would
18 like to call him briefly too, Judge.

19 THE COURT: I know you had given us a list of
20 potential witnesses. Mr. Jennings' employer, what is his
21 name?

22 MR. LOFARO: I believe Howard Davis.

23 THE DEFENDANT: Howard Davis.

24 MR. LOFARO: It's like the Olympic boxer, Judge.
25 Howard Davis.

- Witness discussion -

261

1 THE COURT: That's Mr. Davis?

2 MR. LOFARO: Yes.

3 THE COURT: And we have Mr. Davis, potentially,
4 and Mr. Jennings. Anybody else? I am not holding you to
5 this, John. I am wondering for scheduling purposes?

6 MR. LOFARO: I don't think we are going to have
7 any other witnesses.

8 THE DEFENDANT: We are still waiting for Willie
9 Jones. He is incarcerated, Your Honor. I had let this
10 known back in December. And before then that, you know, he
11 is a witness in regards to this case. And he is definitely
12 needed.

13 THE COURT: Where is he, Mr. Jennings?

14 THE DEFENDANT: I'm not sure. He is in the
15 Department of Corrections. And he was a witness that was
16 in the car with me.

17 THE COURT: I know. I know who Mr. Jones is with
18 regards to this case.

19 THE DEFENDANT: Okay.

20 THE COURT: I don't know if he is going to be
21 here to testify. What I would plan to do today, gentlemen,
22 is to take the testimony of Mr. Davis. And if Mr. Jennings
23 chooses to testify, we will take his testimony. That will
24 get us until about 2:30, correct?

25 MR. CENTRA: I believe so, Your Honor.

- Witness discussion -

262

1 THE COURT: So we could go right to summation of
2 counsel after that. And then we will charge them and send
3 them out in the morning.

4 THE DEFENDANT: I still need my witnesses. That
5 I haven't had Willie Jones, the opportunity for him to
6 testify on my behalf. And also Mr. Chaplain and Hatisha
7 Holmes.

8 THE COURT: Here is the way this works. The way
9 this works is the People get their witnesses ready. They
10 bring their witnesses in. And if the defense wants
11 witnesses, they have to get them ready to bring them in.
12 Okay. That's up to Mr. Jennings and Mr. LoFaro as to how
13 that works.

14 So I will let the two of you talk. And we will
15 resume at 1:30. Okay. Anything else, Mr. Centra?

16 MR. CENTRA: No, Your Honor.

17 THE COURT: You have the exhibits?

18 MR. CENTRA: I do.

19 THE COURT: Okay. You keep the exhibits. All
20 right. 1:30.

21 (Recessed for lunch at 12:28 p.m.)

22

*

*

*

23

24

25

- Afternoon session - 2/7/17 -

263

AFTERNOON SESSION - 2/7/17

2 (Trial continued on Tuesday, February 7, 2017 at 1:41 p.m.)

THE COURT: Thank you. Have a seat. Thanks.

4 Back in session outside the presence of the jury. And we
5 have both counsel and we have Mr. Jennings. And John, not
6 that there is a burden on you to call any witnesses, but
7 are you prepared?

11 THE COURT: My understanding is that with regards
12 to any offer of proof, basically his testimony is going to
13 be to rebut what one of the police officers said about him
14 not working and selling drugs?

15 MR. LOFARO: That's correct, Your Honor.

16 THE COURT: Okay. You don't have any problem
17 with that, do you, Mr. Centra?

18 MR. CENTRA: Judge, limited to that Judge, I have
19 no objection.

20 THE COURT: Okay. Let's have the jury, please?

21 (The jury entered the courtroom at 1:44 p.m.)

22 THE COURT: Folks, good afternoon. You had to go
23 outside and enjoy the nice weather. We're here with the
24 jury, Mr. Centra, Mr. LoFaro and Mr. Jennings. And the
25 People have rested their case.

Davis - direct

264

1 And Mr. LoFaro, does the defense wish to call a
2 witness?

3 MR. LOFARO: Yes, Your Honor, I would like to
4 call Howard Davis, Your Honor.

5 THE COURT: All right. Let's have Mr. Davis,
6 please.

7 H O W A R D D A V I S, Called as a witness in behalf of the
8 Defendant, being duly sworn, testified as follows:

9 THE COURT: All right. Mr. LoFaro?

10 DIRECT EXAMINATION BY MR. LOFARO:

11 Q. Good afternoon, Mr. Davis.

12 A. Good afternoon.

13 Q. How are you?

14 A. Pretty good.

15 Q. Mr. Davis, I am going to call your attention back to
16 January 5th of 2016. Were you employed at that time?

17 A. Yes.

18 Q. How were you employed?

19 A. Well, currently the employer.

20 Q. Okay. What's the nature of your business?

21 A. Construction.

22 Q. And what is the name of the company that, do you own a
23 company?

24 A. Yes.

25 Q. What is the name of the company that you own?

Davis - direct - LoFaro

265

1 A. H.B.H. Construction.

2 Q. And you currently own that company?

3 A. Yes. Yes.

4 Q. And that's how you earn your living today, with the
5 construction company?

6 A. That's correct.

7 Q. Now, were you the owner of that company in January of
8 2016?

9 A. Yes, I was.

10 Q. Okay. Would you tell the jury a little bit about the
11 nature of your business?

12 A. Yes. We pretty much, we get into doing commercial
13 build-out. Roofing. Siding. Demolition. Asbestos abatement.
14 Pretty much anything that falls in the general construction.

15 Q. So are you a general contractor?

16 A. Yes.

17 Q. Okay. And on January 5th at 2016, was the defendant
18 Tony Jennings, was he in your employ at that time?

19 A. Yes, he was.

20 Q. What were his job duties working for your company at
21 that time?

22 A. We were currently working on a project that he was a
23 laborer doing demolition work.

24 Q. How, as of January 5th 2016, on that date, how long
25 had he been an employee of yours?

Davis - direct - LoFaro

266

1 A. He started 2013.

2 Q. Okay. Now, in January, of 2016, did you have regular
3 work at that point in time?

4 A. Yes, I did.

5 Q. On that day, that week, was he working?

6 A. He was supposed to have been to working that day, but
7 he wasn't there. I got a phone call saying that: No call, no
8 show.

9 Q. No call, no show on January 5th 2016?

10 A. Yes.

11 Q. The day he was arrested?

12 A. Yep.

13 Q. Prior to the 5th of January, was he working with you
14 consistently and regularly on a daily basis?

15 A. Yes, he was.

16 Q. How many hours a week would you say he worked for you?

17 A. Between 25 to 35 hours a week.

18 Q. Okay. Do you recall, I know it's been a while, do you
19 recall any of the particular jobs that you were working on at
20 the time?

21 A. Harbor loft. It's on Harbor Street, Emerson Street.

22 Q. Emerson?

23 A. Emerson or Harbor.

24 Q. That's the job that Mr. Jennings was working on also?

25 A. Yes, he was.

Davis - direct - LoFaro

267

1 Q. Did you ever -- did your company ever do any work at
2 the Hotel Syracuse?

3 A. Never, no.

4 Q. Okay.

5 MR. LOFARO: No further questions, Your Honor.
6 Thank you very much.

7 THE COURT: All right. Mr. Centra, any
8 cross-examination?

9 MR. CENTRA: Yes, just some questions.

10 CROSS-EXAMINATION BY MR. CENTRA:

11 Q. Mr. Davis, how are you doing today?

12 A. Pretty good. How are you doing?

13 Q. Good. So you work, you know, on a construction
14 business, correct?

15 A. Yes, that's correct.

16 Q. You stated that you know the defendant Tony Jennings,
17 correct?

18 A. Yes.

19 Q. And you know him since about 2013?

20 A. Yes.

21 Q. Is it just, was it just a work relationship or do you
22 know him personally?

23 A. More work.

24 Q. Work?

25 A. I got to know him personally from working with him.

Davis - cross - Centra

268

1 Q. And so in regards to the job that you described, do
2 you normally work there in the daylight hours?

3 A. Yes.

4 Q. And on January 5th, you stated that Mr. Jennings was a
5 no-call, no-show?

6 A. Yes.

7 Q. On that date? And you later found out that he was
8 arrested?

9 A. Yes, I did.

10 Q. That was the reason for his no-show?

11 A. Yes.

12 Q. But he works in the daylight hours, correct?

13 A. Yes.

14 Q. And you know what time he was arrested?

15 A. No.

16 Q. You don't know?

17 A. No.

18 Q. So he should have been there during the day?

19 A. Yes.

20 Q. All right. Now do you have any sort of business
21 records or keep any sort of business records, paystubs to show
22 his employment?

23 A. Yep.

24 Q. Do you have those here by chance?

25 A. No.

Davis - cross - Centra

269

1 Q. And do you recall how much he was paid?

2 A. Well, it depends on the job. Normally, between if it's
3 a non-rate private job, which that job he worked on, it was \$13
4 an hour. Now on a rate job, it's more like \$40 an hour.

5 Q. Mr. Davis, would you say it would be unusual to hear
6 that somebody works two jobs to make a living?

7 A. Works two jobs?

8 Q. Yes, just in general, like?

9 A. No. I said --

10 THE COURT: He said: I do not.

11 A. I don't find that unusual. I do that with my own
12 company.

13 Q. It's a possibility for somebody to work a job and then
14 do something else on the side, correct?

15 A. Yes, I guess.

16 MR. CENTRA: I have nothing further.

17 THE COURT: Okay.

18 MR. CENTRA: Thank you, Mr. Davis.

19 THE COURT: Anything else, Mr. LoFaro?

20 REDIRECT EXAMINATION BY MR. LOFARO:

21 Q. Yes, Judge. I apologize, Mr. Davis, I may have been
22 remiss. The 5th was the day he was arrested. So obviously,
23 he was a no-show -- he was arrested, I am guessing, is it
24 possible that he was a no-show on the 6th or the 7th or one of
25 the other days, shortly in proximity with his arrest? Because

270
Davis - redirect - LoFaro

1 I have to concur with the D.A. on the 6th, during the day, he
2 would have been with you. He didn't get arrested.

3 THE COURT: The 5th.

4 MR. LOFARO: 5th, rather.

5 A. Well, I remember getting a phone call from my job
6 foreman saying that Tony Jennings was a no-call, no-show two
7 days in a row.

8 Q. Okay. So that was relayed to you through your
9 foreman?

10 A. Yes.

11 Q. Okay. Now either way, obviously, it has been quite
12 some time since early January of 2016, but it's absolutely
13 undisputed that he worked for you up to that date that he was
14 arrested, correct?

15 A. Yes.

16 MR. LOFARO: Okay. No further questions, Your
17 Honor.

18 THE COURT: Mr. Centra, anything else?

19 MR. CENTRA: Just briefly.

20 RECROSS-EXAMINATION BY MR. CENTRA:

21 Q. Mr. Davis, there is kind of a conflicting testimony
22 here. You stated that he was a no-show the 5th, correct?

23 A. Yes.

24 Q. And I guess now it come out that it could have been
25 possibly another date?

Davis - cross - Centra

1 A. Well, it goes back to what I was saying. Is that I had
2 got, I received a phone call from my job foreman saying he was
3 a no call no-show two days in a row. And that had to have
4 been, that was the next day.

5 Q. Well, okay. The next day being the 6th?

6 A. Yes, yes. The 6th.

7 Q. So you got the call on the 6th that he hadn't been
8 there for two days. So that would be the 5th and the 6th?

9 A. Yes.

10 Q. All right. So he doesn't show up on the actual day of
11 the 5th, is what you're testifying to?

12 A. He wasn't there on the 5th. And he wasn't there on the
13 6th.

14 MR. CENTRA: Thank you.

15 THE COURT: All set?

16 MR. LOFARO: Yes, Judge.

17 THE COURT: Thank you, sir. I appreciate your
18 time.

19 THE WITNESS: Yes, thank you.

20 THE COURT: Mr. LoFaro, any other witnesses?

21 MR. LOFARO: Yes, Your Honor. I call Tony
22 Jennings.

23 T O N Y J E N N I N G S, Defendant, Called as a witness in
24 his own behalf, being duly sworn, testified as follows:

25 THE COURT: Before I begin, could I have counsel

Jennings - direct

272

1 at the Bench for one moment, please?

2 (Conference at Bench.)

3 (Photo previously marked Defendant's Exhibits A.)

4 THE COURT: All right. Mr. Jennings has been
5 sworn in. Mr. LoFaro, when you're ready?

6 MR. LOFARO: Okay.

7 DIRECT EXAMINATION BY MR. LOFARO:

8 Q. Good afternoon, Mr. Jennings.

9 A. Good afternoon.

10 Q. How are you? Mr. Jennings, we are going to go back to
11 that same period of time too, January 5th of 2016. And if you
12 could, you know, just to cut to the chase, and I don't have to
13 go through all of the exposition that everybody has already
14 heard. I have already kind of informed them what you were
15 doing on that day. But let's pick it up around whatever time
16 it was you would have, like around four or five o'clock?

17 A. Okay.

18 Q. On January 5th at 2016, if I could. Do you recall
19 that date?

20 A. Yes, absolutely.

21 Q. What were you doing on that day around that time?

22 A. On that day, on January 5th, good afternoon, everybody.
23 On January 5th, 2016, it was like around five o'clock when I
24 received a phone call from a friend of mine. His name is
25 Willie Jones. And he asked me if I could give him a ride to go

Jennings - direct - LoFaro

1 get his car. He wanted to do some work on his vehicle. So I
2 told him, I said I would come down there, I would give him a
3 ride and I would help him out. This was around five o'clock
4 now.

5 Q. Mr. Jennings, I don't mean to interrupt, but I kind of
6 have to from time to time just to lay a proper foundation.
7 Everybody knows where we are going with this. He gave you a
8 call. He asked you to come down where?

9 A. To the Pioneer Homes.

10 Q. Where were you at that point in time of the day?

11 A. Dewey Ave.? It's over off of, that's where I stay, 119
12 Dewey Ave. It's over like you're heading towards Solvay, off
13 of Genesee behind Harrison Bakery.

14 Q. Okay.

15 A. I came from home.

16 Q. Okay. And he asked you to meet him there?

17 A. He asked me to meet him.

18 Q. Continue?

19 A. He asked me to meet him at Pioneer Homes. I got in my
20 car. I came down there to the Pioneer Homes, picked him up.
21 He went to a, it's a gas station on the south side. He brought
22 his tools with him in the car. He had an air inflator. It's
23 like you can plug it into your car, and you can put air in your
24 tire or bicycle, football, anything. Because the car had been
25 sitting for a while. So, he wanted me to give him a ride, so

Jennings - direct - LoFaro

1 he could attend to it, and then move it from that area, back to
2 where he lived at with his girlfriend in Pioneer Homes.

3 So we stopped by the gas station. And probably by the
4 time I get down there, it's like 5:20 almost, I want to say
5 maybe 5:20, because I left my house around about five o'clock.
6 So I get there with him to the gas station. He puts the gas in
7 his gas can. And I take him back around on Burke Street behind
8 a barber shop so he can attend to his car.

9 So he gets out of the car. He takes all his tools out
10 with him that he used to fix his car. And he tells me, okay, I
11 see you later. So I said, well, this, it's cold out here, it's
12 January-like. Like you have got to walk from here even for a
13 few blocks away, you got to walk from here, walk a way back
14 over there, I am not going to do that. I am not going to leave
15 you out in the cold. Plus, you need some light to see what you
16 have to do, what you're doing.

17 So I turn my high beams on the car, while he lifted the
18 hood, and he was working on his car. And he didn't have the
19 proper tools that he needed. He was back there fighting with
20 it for a minute trying to get it to start. He couldn't get the
21 cables wrapped around the battery properly because he undid it.
22 He didn't want the battery to drain by the time he got back to
23 it.

24 Now, after fighting with it for a while, he was like,
25 it's not going to start. I don't have the right tools. Da,

Jennings - direct - LoFaro

275

1 da, da. So far, so, I tell him, I said, well, we have been
2 sitting here for a while. It's like, it's, we was there for a
3 period of time. So I would say maybe it was like around 6:30
4 that he was back there, trying to put air in the tire. The air
5 wouldn't go in.

6 So now, he gets back in the car. Brings all the stuff
7 in with him, his tools. And I take him back to the Pioneer
8 Homes to his girlfriend's house, to the parking lot, Radisson
9 Court.

10 And we are sitting inside the car for a while. We are
11 just talking. We were just talking. But he had that gas can
12 inside of my car. And it was, the smell was strong. So I told
13 him, I said, Listen, Willie, take that gas can, take it out of
14 the car, put it out of my car. He said, I will, but I have to
15 go in the house anyway. So, you know, we are saying our
16 fair-wells, whatever.

17 He is getting out of the car, taking the stuff out of
18 the back seat, his tools that he brought with him. And I am
19 waiting for him to shut the door. He was just, he looks up,
20 excuse my language, but he says: Oh, shit. So I turn around
21 and I look to see what he was talking about. And I see a
22 marked police vehicle, with no lights on, pulled directly
23 behind me.

24 Now, when you come into Radisson Court, I didn't
25 neither seen them coming, there was a car parked on the left

Jennings - direct - LoFaro

276

1 side. It's a truck parked on the left side of me. And there
2 is a car parked on the right side of me. So I am actually in
3 between two cars. And the flow of traffic to come into this
4 parking lot, it's only one way in, and one way out, when you go
5 in either one of the courts. So, you have -- do you have
6 pictures, John? Could I see the pictures so I could show them
7 what I am talking about?

8 Sorry about that.

9 (Showing Defendant's exhibit to Mr. Centra.)

10 Q. Your Honor, I am going to show the defendant what has
11 been marked as Defendant's Exhibit A.

12 A. Okay. I mean.

13 Q. Do you want to mark it with a mark?

14 A. Mark it?

15 Q. What are you trying to, what are you trying?

16 A. I am trying to explain to them the way that the
17 officers came in and where I was parked. They couldn't see me,
18 and I couldn't see them oncoming, and due to the fact they had
19 their lights off. There was never a high beam, like he said,
20 that he flashed on my car. Never seen a high beam. It was
21 just that the area, how they pulled in, they blocked me off, so
22 I couldn't back out. I couldn't back out of the parking space.
23 But the picture is right here.

24 (Indicating.)

25 Q. Do you want to mark it?

Jennings - direct - LoFaro

277

1 A. No, I don't need to mark it. They should be able to
2 see.

3 THE COURT: Before you show it to the jury, are
4 you offering it?

5 A. Yes.

6 THE COURT: Not you.

7 MR. LOFARO: Yes, Judge.

8 THE COURT: Any objection?

9 MR. CENTRA: Judge, I just ask for proper
10 foundation. I am not sure, I've never been to the area. I
11 am not sure exactly where it is.

12 THE COURT: What does the picture depict? What's
13 it of, a photograph?

14 MR. LOFARO: The entryway to the Pioneer Home
15 development.

16 A. I am scribbling down on the paper where I was parked at
17 in my car.

18 THE COURT: I will receive it.

19 A. Okay.

20 BY MR. LOFARO:

21 Q. This is where you were parked?

22 A. Right where I scribbled, this paper, so they could have
23 an idea on how it was. The parking lot is empty right now in
24 the pictures. But the night of January 5th, it was other
25 vehicles that was parked inside of the parking lot. And with

Jennings - direct - LoFaro

1 the truck parked on one side, I wasn't able to see who was
2 coming into the parking lot because of the way you have to come
3 in.

4 Now, once they blocked my car off, and I turned around
5 and looked, because I see my friend, he was standing there and
6 he is like, excuse my language, again he says: Oh, shit. So,
7 I turned and I looked. And immediately they rushed, jumped out
8 of the car. They blocked my car off, and they jumped out of
9 the car. And they, both of the officers run to my passenger
10 that was in the car with me, Willie Jones. And immediately
11 they started searching him. They grabbed him. And I remember
12 Officer Decker, I guess that was him, I didn't know his name at
13 the time, but the one Darrin Ettinger, he was actually
14 searching him. I am looking through the open car door because
15 when he got out of the car, he was getting his stuff out, and
16 when they pulled up, that's what startled him so.

17 They jumped out of the car, and immediately they
18 started searching him. So while he is holding him from, I
19 guess he must have thought he was going to run, whatever, but
20 they asked him, what are you guys doing? What have you got?
21 Have you got drugs on you? Whatever, you got guns in the car?
22 We are like, No, we ain't doing nothing. I am just getting
23 dropped off, like. I live here. I am going to my girlfriend's
24 house. So they like, No, oh, no. I see is two guys sitting
25 over here, you have to be doing something. Like something is

Jennings - direct - LoFaro

1 going on. Just tell us, you got some dope on you? You have
2 got some guns on you? Something? So, he's like, No, I ain't
3 got nothing on me.

4 So the officers, I am watching through the door,
5 through the passenger side door, he got his pants, pulled open,
6 he's flashing his flashlight in there, and we didn't even do
7 anything wrong.

8 So, I go to get out after watching this for a couple
9 minutes. You know, they was watching me, flashing their
10 flashlight through the back window of the car. I guess the
11 one, Jeremy Decker, when he was holding him, I guess from -- he
12 thought I was going to run or go somewhere. So, now he comes
13 around to, I go to get out of my car, after sitting, watching
14 this for a while to get out to see what's going on.

15 Immediately, Officer Jeremy Decker runs around the car and
16 jumps into the doorjamb of my car. So I am asking him, what's
17 going on? Why are you stopping me from getting out of my car?
18 Like, why did you block my car off? He goes, he didn't say
19 anything at first. He is just standing there. I guess he is
20 watching what's going on over there. What's going on on the
21 other side of the passenger side with his partner.

22 But then I am asking him. I am like, Did I do
23 something wrong? Then he responded, he goes, What do you guys
24 got? You got some what -- are you getting high? You got some
25 dope on you? You got guns in the car? I am like: No. I am

Jennings - direct - LoFaro

280

1 like, why did you block my car off? So, he didn't answer my
2 question. I kept asking him repeatedly, like: Why are you
3 blocking my car? Like I didn't do nothing wrong. So he asks
4 me, he said: Do you live here? I said, No, my friend lives
5 here. He is going home. That's his girlfriend house, like.
6 You see the gas can stuff. He said, Well, what are you doing?
7 I said, I just gave my friend a ride from working on his car.
8 I came from home, gave my friend a ride working on his car.
9 And I am, I am dropping him off. This is his establishment.
10 He lives here. So he goes, Well, you got any drugs, anything
11 inside of the car? Guns? Because I know something is going
12 on, I see two guys making furtive movements inside of a car.
13 There has to be something going on. So I tell him, I said:
14 There is nothing going on now.

15 As far as a scale, that he said, he reached through my
16 window, my car door was already opened, and I was talking to
17 him, trying to have a conversation with him. But he kept
18 overpowering me with: Where is, where is the drugs? Where is
19 the guns? I said: Listen, officer, are you going to let me go
20 about my business or no? He was: No, there is something,
21 something has to be going on. So, once I explained to him that
22 you know, I was dropping a friend off, I was on my way back
23 home, I didn't live down there. And he asked me, he said: Do
24 you have identification? He asked me if I had an I.D. I told
25 him, I said, No, I don't have I.D. I have a driver's license.

Jennings - direct - LoFaro

281

1 Well, he said, that's identification. Sure, let me,
2 let me have that. So I said it's in my back pocket in my
3 wallet. I am going to reach back there. I am going to get it.
4 He said, Go ahead. I went, my back pocket. I got my wallet.
5 And I opened it. Got my license out, and I gave it to him. He
6 took it. Looked at it, flashed his flashlight on it. And then
7 didn't say anything. He didn't check it. He didn't run my
8 name to see if, you know, if there was any warrants or let me
9 know if there was a traffic infraction or violation of
10 something that transpired. He just told me that he seen me
11 making furtive movements. So he stopped me. Now, he -- so
12 while he is sitting there, and he's not saying anything, I
13 said: Well, I have my registration and insurance in the glove
14 compartment. Would it be okay if I go in there, get my
15 registration and insurance and provide you with that? He
16 looked, flashed his lights in the glove compartment, said:
17 Sure, go ahead.

18 I reached over, reached to the glove compartment, got
19 my registration and insurance out, and handed it to him. He
20 took it, looked at it, flashed a light over it. Took my I.D.
21 Put it in the top of his pocket. And then sat the rest of the
22 paperwork on the hood of the car, and then told me to step out
23 of my car. So I step out of my car. For what? He said: Step
24 out of your car.

25 Now I am under pressure. I am under pressure and

Jennings - direct - LoFaro

282

1 duress. Like this is all unnecessary. Like I didn't do
2 anything wrong. So now the Officer, he tells me to get out of
3 the, I am scared because I don't know just how they ran down on
4 us. I get out of the car. He said: Turn around, place your
5 hands on the hood of the car. I get out of the car, turn
6 around, place my hands on the hood of the car. Immediately, he
7 just starts searching me. So he grabs my top coat pocket. I
8 am wearing a Army fatigue coat. It's cold outside. I am
9 wearing an Army fatigue coat. He takes his hand, squeezes it,
10 and then he sticks his hand in there, in the pocket. I don't
11 know -- I don't think anybody, I am wondering why this officer
12 would go inside of my pocket. So he grabs the bottom pocket of
13 the Army jacket, coat, and he squeezes it. Then he sticks his
14 hand inside of it. So, I said: Officer, listen: Why are you
15 going inside of my pockets like, am I under arrest? He tells
16 me, Well, you're acting like you're real nervous right now. I
17 tell you, I pulled up. I see two guys making furtive
18 movements.

19 There was no way to see me do anything or my passenger
20 in the car because there was cars blocking us. And the
21 passenger was already outside of my car, where you pulled up,
22 so you just saying this. And you have no reason to even bother
23 me or even stop me.

24 So he is checking inside of my coat pockets. And he's
25 not giving me a reason or even reading me my rights or telling

Jennings - direct - LoFaro

283

1 me that I am under arrest. But yet he is searching inside of
2 my pockets, violating me.

3 So now he squeezes my right pants pocket. And then he
4 sticks his hand in there. Then he lifts the back tail of my
5 coat. He lifts it up. He takes his hand and goes from the
6 back around to the front, and then comes back around and then
7 sticks his hand down the back side of my pants. I feel his
8 hands in between my buttocks, and I tell the officer, I said,
9 Well now, you're violating me. I said, Officer, you're
10 violating me now. And this is unnecessary. You're out of
11 line, like I didn't do nothing wrong.

12 I turned around and tried to get the officer to take
13 his hand out of my pants because of the violation that I felt
14 that he grabbed me, took me, and slammed me to the ground. I
15 hit my head on the ice, in the parking lot, because it was cold
16 out there. I told him, I said, I said: All of this is
17 unnecessary.

18 That's when the other officer ran from the other side
19 of the car, came around, and knelt down on one knee, and he
20 punched me in the face. For no reason. Glasses went to the
21 side. They still broken now, to this date, because of that.
22 But excuse me, excuse me. They picked me back up. The officer
23 picked me back up. Put me back up against the car. I
24 continued to, they continued to search. Continued to search.
25 Stuck his hand in my left pocket. That's when he pulled out

Jennings - direct - LoFaro

284

1 the contraband that I had in my pocket. But I never disputed
2 the fact that I was in possession of this contraband. It was
3 just the fact of how you went about it. You had no right to do
4 that to me. You violated my constitutional rights. There was
5 no reason. You lied, and you said that there was all types of
6 paraphernalia in my car, that I was never even charged with. I
7 told him that this was never inside of my car. I found out
8 about this during the course of this trial, and other court
9 proceedings, that there is evidence that was going to be
10 presented that wasn't even charged against me. You never had
11 no probable cause or reason to pull me from my car. This
12 officer never did his job the way he was supposed to do it.

13 MR. CENTRA: Judge, I am going to object here.
14 It calls for speculation.

15 THE COURT: Hold up, sir. We are just going to
16 talk about the facts. Mr. LoFaro, why don't you bring us
17 back to some questions. Get to the facts, please.

18 BY MR. LOFARO:

19 Q. Okay. Mr. Jennings, just move it along. What the
20 Judge is asking, move it along with factual perspective,
21 without the, without -- obviously, you're very emotional, so I
22 understand the feelings get in the way. But, really, you just
23 get to the facts for the jury. So what happened after that,
24 just from a factual perspective? What happened,
25 chronologically?

Jennings - direct - LoFaro

285

1 A. After that, the officer, he ran around, when I hit the
2 ground, I placed my hands behind my back because I didn't want
3 no misconception or anything that I was resisting or trying to
4 do anything. I was trying to get the officer to take his hands
5 out of my pants. But I ended up getting slammed to the ground.
6 I never ran from the officer like which he testified to and
7 said that I ran from him. I was being violated. I tried to
8 get the officer to stop. So, once he slammed me to the ground,
9 they picked me up, continued their search. Then he found the
10 contraband in my left pants pocket. I don't know if I was
11 arrested before that, or arrested then. But they picked me up
12 off the ground, they put the cuffs on me, and I was arrested.

13 Q. Mr. Jennings, there has been some testimony that after
14 you were arrested, and brought downtown, that you made a
15 statement with regard to being unemployed and selling drugs
16 because of your unemployment. And we just heard from another
17 witness, but if you could answer to that, please?

18 A. I never, I never made a statement to the officer
19 telling him that I was unemployed. I was working at the time
20 for HBH Corporation Enterprises, and that was my current job.

21 Q. As of January 5th, you were gainfully employed?

22 A. As of January 5th.

23 Q. How many hours a week were you working?

24 A. Around what he said, around 25 to 30, if it was like an
25 unrated job or whatever. Whenever it's a rate job, we would

Jennings - direct - LoFaro

1 get, we would get the full amount of hours, the 40 hours a
2 week.

3 Q. So obviously, if you were employed, you're not going
4 to tell somebody you're unemployed?

5 A. Absolutely. I never told the officer that I was
6 unemployed. I never, I never told him that. I never told him
7 that I sold drugs. I never mentioned that. And the drugs that
8 I was in possession of, when it was given to me, I was told
9 that it was another substance, that it was the drug Molly. And
10 the way you use the drug Molly, you put it into your drink, you
11 dissolve it. And that's what I was under the impression that I
12 had, what was given to me.

13 And the reason I didn't show up for work on that day is
14 because I was, I was, I was going to celebrate. I had just got
15 accepted for two-year, for my financial aid for two-year degree
16 at ITT Technical Institute. And I was happy about that. I
17 didn't get a chance. I didn't, I didn't show up for work that
18 day. And I was, I was just --

19 Q. Mr. Jennings, there has been a lot of talk about going
20 through the vehicle and inventorying the -- what you were
21 doing and what you weren't doing. If you could just rewind
22 for a brief moment and go back to your testimony with regard
23 to when you first noticed the police vehicle behind you. Were
24 you or the other passenger in the vehicle doing what were you
25 doing -- what were you doing?

Jennings - direct - LoFaro

287

1 A. I was in the vehicle. And I was sitting there talking,
2 talking to my passenger as he was out of the car, retrieving
3 the rest of his property, because he was leaving, I recall.

4 Q. Just let me stop you. When you ultimately noticed
5 those two officers, did you make any suspicious movements?
6 Did you do anything inside the compartment of that vehicle?

7 A. No.

8 Q. Did you secrete anything at that point?

9 A. No, never. There was nothing to secrete.

10 Q. There was a small black scale that was entered into
11 evidence that they are claiming was on the console of your
12 vehicle.

13 A. That scale was never inside of my car.

14 Q. It was never inside your vehicle?

15 A. That car was, it was never, I never even seen it
16 before. I haven't even been charged with it. He said that it
17 was cocaine on top of it. I haven't, I haven't even seen the
18 lab reports for the results of it. They say this was their
19 probable cause for pulling me out of my car.

20 MR. CENTRA: Judge, I am going to object to this.

21 THE COURT: Mr. LoFaro, you have to keep to the
22 question, please.

23 BY MR. LOFARO:

24 Q. Okay. There has been testimony that there was one
25 cellphone, two cellphones. I don't know if they were yours.

Jennings - direct - LoFaro

288

1 I don't know if they were the other passenger's. I haven't
2 seen any cellphones in evidence. Did you have a cellphone?

3 A. I hear you saying that I was using a cellphone to sell,
4 to sell drugs or something like those. One of the phones
5 didn't even work. One of them is for Internet purposes. When
6 I had a Wi-Fi, Wi-Fi zone area; it's a 4G network phone. It
7 picks up -- the Internet speed is fast. And I use that for
8 that.

9 My other phone is my family phone, that I use for my
10 employer and for my mother and my kids or whatever, and so
11 forth. That's what I use the phone for. The other phone is,
12 it's not even activated, but there was two phones. Yes, there
13 was two phones.

14 Q. Okay. All right.

15 A. Those were inside of my car, in the console, the
16 console area.

17 Q. And there was about \$210 in cash. How do you explain
18 that?

19 A. Yes. Well, I do work. And I do keep cash on me. Now
20 sometimes when I go in the house, I will leave my money on the
21 coffee table. Or I might leave it in the kitchen or I might
22 leave it in the dresser. And if I am on the go, I am going
23 from my apartment, I am going to my mom's house or I might be
24 running errands or whatever, not all the time, I want to go in
25 the drawer and get my money out of there, just in case I might

Jennings - direct - LoFaro

1 need to get some gas. My nieces might need something. Or I
2 might just want to buy something. I might want to go shopping
3 and do something. I will have money in the car. I always keep
4 money in my car, whether it was \$50, \$60. I always keep money
5 around. But as far as anything else arising out of that, as
6 far as me being a drug dealer because of?

7 Q. Let me stop you right there.

8 A. Phones and --

9 Q. Final question, unless there is anything else you want
10 to add: On January 5th 2016, you, at that point in time, did
11 you have any intention at that point in time of selling or
12 distributing drugs in any way, shape or form?

13 A. No. Absolutely not. I have never even sold drugs. I
14 have never even sold drugs. I had it and my intentions was to
15 celebrate because I was happy, that I was getting ready to
16 embark on something, do something different. I had just got
17 accepted for my financial aid at school, at ITT tech. It's
18 unfortunate because they are shut down in Central New York,
19 after, after about nine months, after about nine months after I
20 got approved. And I was supposed to start my classes the very
21 next day. And actually, my professor for --

22 THE COURT: Mr. LoFaro? Mr. LoFaro?

23 MR. LOFARO: Okay.

24 A. My professor forwarded you my schedule.

25 Q. Right.

Jennings - direct - LoFaro

1 A. At the time, but you said you never received it.

2 MR. CENTRA: Judge, once again, this is.

3 THE COURT: Let Mr. LoFaro ask you a question.

4 MR. LOFARO: Okay. I think those are all the
5 questions I had, Mr. Jennings. So, I thank you for your
6 testimony.

7 Your Honor, I have no further questions.

8 THE COURT: Okay. Mr. Centra, cross-examination?

9 CROSS-EXAMINATION BY MR. CENTRA:

10 Q. Mr. Jennings, how are you doing today?

11 A. All right.

12 Q. I guess I will just kind of cover, go right into it.
13 So you stated here on January 5th 2016, you were actually
14 present at the Pioneer Homes with your buddy Willie Jones?

15 A. Yes.

16 Q. All right. And you were sitting in your car and you
17 were at Radisson Court, and you're sitting in your vehicle,
18 it's your vehicle, correct?

19 A. Yes.

20 Q. Is that a black Acura?

21 A. Yes.

22 Q. And you were in the driver's seat, right?

23 A. Yes.

24 Q. Now it was around 6:30 or a little after that, you
25 state that officers approached your vehicle?

Jennings - cross - Centra

291

1 A. 6:40-ish? 6:43 or something like that. I seen, I can
2 remember from the police report, yes.

3 Q. Okay. And then at some point it was Officer Decker
4 eventually came to the driver's side where you are, right?

5 A. Yes.

6 Q. And Officer Ettinger went to the passenger side,
7 right?

8 A. No. When they first pulled up, both officers exited
9 their vehicle, and ran straight to the passenger because he was
10 already outside of the car. Willie Jones. So they both was
11 over on the passenger side.

12 Q. So Officer Ettinger stayed over there, and then
13 Officer Decker came over to your side?

14 A. No. After, after he assisted him in the search of
15 Willie Jones, then he came around to my side, once I opened the
16 door, to try and get out of the car.

17 Q. And you stated when you spoke with your attorney here,
18 that on numerous, number of occasions, Officer Decker asked
19 you if there were drugs in the vehicle, if you had any drugs
20 on you, right?

21 A. Correct.

22 Q. You repeatedly told him no?

23 A. Correct.

24 Q. And Officer Decker states that he saw a scale and
25 that's why he asked you to step out of the vehicle, right?

Jennings - cross - Centra

292

1 A. No, I actually -- he testified that he reached through
2 the window of my car. That my window was down in January, and
3 he reached through the window of the car, over me, and through
4 the car is what he testified to, and he retrieved it from the
5 center console.

6 Q. But he said that he saw that, and it was based on
7 that, that he asked you these questions and eventually asked
8 you to step out of the vehicle, right?

9 A. For to arrest me or?

10 Q. To step out of the vehicle, to?

11 A. Because of the scale?

12 Q. I am just asking, did he ask you to step out of the
13 vehicle?

14 A. Yes, he asked me, he asked me to step out of the
15 vehicle.

16 Q. You repeatedly told him that you had nothing on you.
17 But here you just testified again that you actually did have
18 drugs on you?

19 A. Yes.

20 Q. So you lied to Officer Decker?

21 A. I mean, he had no reason to be questioning me in
22 regards to.

23 THE COURT: Mr. Jennings, Mr. Jennings. Mr.
24 Jennings, the question was, it calls for a yes or no
25 answer.

Jennings - cross - Centra

293

1 Mr. Centra, why don't you re-ask your question.

2 A. I am not really understanding the question.

3 Q. So, you told Officer Decker that you didn't have any
4 drugs on you, when you in fact know that you did, correct?

5 A. Right.

6 Q. And the reason that you told him that you didn't
7 because you knew that you would be trouble if he found those
8 drugs on you, right?

9 A. Correct.

10 Q. So when he began to search you, you ran because you
11 knew that if he found that, you would be in trouble?

12 A. I never ran. The officer stuck his hands inside of my
13 pants. And I turned around to get Officer Jeremy Decker to
14 take his hands out of my pants, and he slammed me to the
15 ground.

16 Q. And then eventually, you got taken into custody,
17 further searches were done, correct, on your vehicle and your
18 person?

19 A. I am not -- can you repeat that?

20 Q. So, you were eventually taken into custody, and your
21 person was --

22 A. Correct.

23 Q. -- further searched, that's when he found the cocaine
24 in your pocket, correct?

25 A. When I was taken to jail?

Jennings - cross - Centra

294

1 Q. No. When you were taken at that point, when you were
2 secured by Officer Decker in the parking lot?

3 A. Okay. He picked me up off the ground.

4 Q. He continued to search you?

5 A. Then he put me back on the, placed me back on my car,
6 in handcuffs, and then he went inside of my pockets.

7 Q. And that's where he found the cocaine that was in your
8 pocket?

9 A. I was unaware that it was cocaine until -- or pure
10 cocaine or crack. I don't know what they said it was. But I
11 was told that it was Molly, that I was in possession of Molly.
12 But, I mean.

13 Q. And then you also, you also had the amount of cash,
14 the \$110 in your pocket, correct, that you previously stated?

15 A. Correct.

16 Q. That they also searched your vehicle, they found the
17 cellphones that you stated that were in the vehicle, correct?

18 A. Correct.

19 Q. And there was also some cash that you said that you
20 keep in your car?

21 A. I keep in my car.

22 Q. All right. And then, you're eventually actually
23 arrested for possessing that cocaine after Officer Decker
24 tested it, correct?

25 A. Cocaine? Or I am not sure, because it was, I was

Jennings - cross - Centra

295

1 charged with possession of crack. And crack, in the fourth
2 degree. Third degree, fourth degree, and seventh degree, I was
3 charged with.

4 Q. That was for possession of a controlled substance, not
5 specifically, and crack is another form of cocaine, correct?

6 A. I guess so. I believe. I'm not sure.

7 Q. And when you were actually arrested, and placed in the
8 vehicle, you were asked a number of questions, just basic
9 pedigree information, birthday, address, things like that?

10 A. Yes.

11 Q. And you were actually asked if you were employed, and
12 did you tell them that you were employed by HBH Construction?

13 A. Yes. It was more, it wasn't more of a question. It
14 was like it was implied. Because I have my certifications
15 inside of my wallet. He had my wallet. And I have my asbestos
16 abatement card from I think the Department of Labor to show my
17 certification; and my OSHA for me to be able to do construction
18 to go for -- I have both of my cards in my wallet. So when you
19 go through there, he says: You work in construction? And he
20 is telling me because he is looking at them, so.

21 Q. So you let him know that you were working in
22 construction then?

23 A. Yes.

24 Q. And you stated that, you're telling us that you stated
25 that you didn't tell him that you were selling that cocaine?

Jennings - cross - Centra

1 A. No, I have never, I never made a statement to either
2 one of the officers telling them that I sold cocaine or any
3 drug.

4 Q. Now, like I asked your employer, it's not strange for
5 somebody to have multiple jobs, right? You said you worked
6 25, 30 hours a week, correct?

7 A. Depending on the job that I may be doing.

8 Q. So it's not unusual, you know, for somebody to have a
9 second job doing something else on the side if you're not
10 getting the hours you want, I am not saying you specifically?

11 A. On the side, on the side, two jobs? Or?

12 MR. LOFARO: Objection, Your Honor. It calls for
13 speculation.

14 THE COURT: I am not sure of the relevance. But,
15 we will move on, okay, Mr. Centra?

16 BY MR. CENTRA:

17 Q. So, you stated that you were celebrating, that you
18 were moving on to better your life, get a, you got accepted
19 for financial aid for the two-year graduate?

20 A. I got accepted for a two-year's associates degree at
21 ITT technical and computer software for troubleshooting for --

22 Q. You found, you found the best way to celebrate that is
23 to buy some drugs and celebrate?

24 A. I didn't never say that I bought the drugs. I said
25 that it was given to me. And I was told that it was Molly.

Jennings - cross - Centra

1 And I was going to use it to celebrate the fact of that.

2 Q. Mr. Jennings, isn't it true that you had been
3 convicted of the felony crime of criminal possession of weapon
4 in the second degree on June 11th 2007?

5 A. Correct. I pled guilty to that.

6 MR. CENTRA: I have no further questions. Thank
7 you, Mr. Jennings.

8 THE COURT: Mr. LoFaro, anything else?

9 MR. LOFARO: No, I have no further questions.

10 THE COURT: Okay. Mr. Jennings, you're all set.

11 (Witness off witness stand.)

12 THE COURT: Step down. Mr. LoFaro, any other
13 witnesses or proof on behalf of the defendant?

14 MR. LOFARO: No, Your Honor. The defense rests.

15 THE COURT: The defense rests.

16 Ladies and gentlemen, the defense has rested.

17 And that will close the proof in the case. Here is what I
18 am going to do. We need to take some legal matters outside
19 of your presence. And then I am going to give counsel some
20 time to put their thoughts together to give you their
21 closing arguments, okay? And after we hear their closing
22 arguments, we will see what the time is. But I think we
23 will break for the day, and then tomorrow morning, we can
24 come in fresh. I will give you the charge, the final
25 charge in the law. And let you start your deliberations

- Defense rests -

1 okay.

2 So, why don't I give the attorneys a little time
3 to get their thoughts together. We will break and come
4 back in here hopefully at 2:45, okay?

5 Don't talk about it amongst yourselves or don't
6 let anybody talk about it to you. And promptly report to
7 us any attempt by anybody to talk to you about the case
8 okay? Thank you.

9 (Jury left the courtroom at 2:28 p.m.)

10 THE COURT: We are outside the presence of the
11 jury, with Mr. Centra, Mr. LoFaro, Mr. Jennings. And the
12 defense has rested. And Mr. LoFaro, do you want to renew
13 your trial order of dismissal motion?

14 MR. LOFARO: Certainly, Judge.

15 THE COURT: Anything you want to add to it?

16 MR. LOFARO: No, Your Honor.

17 THE COURT: I do find that the People have made
18 the elements of each offense, made a *prima facie* case as to
19 each of the elements of both offenses. I do intend on
20 submitting both of those charges to the jury.

21 So now, this segues into a good time for a charge
22 conference. Mr. Centra, besides the standard C.J.I. charge
23 that I intend to give, is there anything else that you want
24 me to have the jury consider?

25 MR. CENTRA: Not in regards to the charges,

- Charge requests -

1 Judge.

2 THE COURT: Okay. And Mr. LoFaro, any other
3 charges you want me to consider?

4 MR. LOFARO: No, Your Honor.

5 THE COURT: All right. So, I think we are all
6 set. I don't want to talk for too long, so you guys can
7 put your thoughts together as far as your summations go.
8 Anything else you want to talk about, Mr. Centra?

9 MR. CENTRA: No, Your Honor.

10 MR. LOFARO: No, Judge.

11 THE COURT: Okay. So, what we can do is we will
12 break. I will give you guys 15 minutes to put your
13 thoughts together. Then that will get us to quarter of
14 3:00. I assume we will be done hopefully no later than
15 3:30. I plan on letting them break for the day. We will
16 bring them back in, my calendar is small tomorrow. We are
17 impaneling a Grand Jury but I think between the, I am going
18 to have them come in at 10 o'clock. And hopefully, I can
19 charge from 10:00 to about 11:00. And then we will send
20 them out, okay?

21 MR. LOFARO: Sounds good.

22 THE COURT: Okay. All right. We will break
23 until quarter of 3:00.

24 MR. LOFARO: Thank you, Judge.

25 (Recessed at 2:30, and Trial continued at 2:50 p.m.)

- Closing statements -

1 THE COURT: All set?

2 MR. LOFARO: Yes, Judge.

3 THE COURT: We are back in session, outside the
4 presence of the jury, with Mr. Centra, Mr. LoFaro, Mr.
5 Jennings. And gentlemen, are we ready to proceed with
6 closing arguments?

7 MR. CENTRA: Yes, Your Honor.

8 MR. LOFARO: Yes, Your Honor.

9 THE COURT: And anything else we need to talk
10 about before we get to that?

11 MR. CENTRA: Judge, I was just planning on using
12 the podium. Is there a way to be able to roll it up a
13 little further?

14 THE COURT: I believe it's on wheels. I don't
15 know the "snake" there, I don't know if that's a good idea,
16 Joe.

17 MR. CENTRA: That's fine. I will use it where it
18 is.

19 THE COURT: Use a table if you want. Why don't
20 we have the jury, and we will listen to the closing
21 arguments.

22 (Pause for jury entering the courtroom at 2:52 p.m.)

23 THE COURT: All right. We are back in presence
24 of the jury. Mr. LoFaro, Mr. Centra, Mr. Jennings.

25 And the proof is closed.

- Closing - LoFaro -

1 Ladies and gentlemen, we now turn to the closing
2 arguments or summation of counsel. As I told you earlier,
3 Mr. LoFaro will go first. Mr. LoFaro?

4 (Closing statement by Mr. LoFaro:)

5 MR. LOFARO: Ladies and gentlemen, thank you so
6 much for your time. I really, really appreciate you being
7 here, as I stated before. And I know, you know, I like to
8 think I am a good judge of character. I think you're all
9 doing your best. You're doing a great job as you have been
10 listening attentively throughout the proceeding.

11 I am going to go back to, I'm not going to sit
12 here all day, but I am going to go back to what I feel is
13 very, very important, the precepts that I talked about
14 before we all started. The maze. The shoes. The
15 different analogies that I drew. But the main point being:
16 You can't take short cuts. And law enforcement has a very,
17 very, very difficult job to do in the 21st century. I have
18 nothing but the utmost respect for it.

19 With that being said, they have taken a solemn
20 oath to uphold the law. And they can't short circuit that
21 by doing an around-end, or doing a shortcut in going to get
22 through that maze to the end. And the problem with that
23 is, like Martin Luther King said: Injustice anywhere is a
24 threat to justice everywhere. What that means is, when law
25 enforcement continues to engage in the same activities,

- Closing - LoFaro -

1 they become the new norm. They become the new status quo.
2 And that can't happen because that threatens the very
3 fabric of our criminal justice system. That's a problem.

4 Now, when I talk about becoming the new norm,
5 this new status quo: Putting little fail safes in place to
6 start to change things to their advantage -- not that they
7 don't have an inherent disadvantage; it's a tough job to
8 do -- but when you look at things like we have heard over
9 and over again, you heard the officers up there testify
10 about a suspicious vehicle. About furtive movements.
11 About bulk sales. And freestyle sale of drugs. They are
12 all things that are put in place -- and I hate to say it
13 and regrettably, to do an around-end. And that is the very
14 basic law that they are sworn to uphold because furtive
15 movement has come to mean: You're in a car. Period. In
16 what we consider a high crime neighborhood.

17 If I listen to the officers, not going to say
18 that their testimony wasn't credible. I am not going to
19 say that. A lot of the things that they had to say wasn't
20 believable. But from where I am sitting, it sounds very
21 scripted. Their testimony was almost identical to one
22 another. And the reason it sounds scripted is because in a
23 sense it is scripted. They know how that's -- that's the
24 way, that's the means to the ends. That's how you make an
25 arrest. That's how you roll up on a vehicle with two

- Closing - LoFaro -

1 civilians sitting in a vehicle, having a conversation with
2 one another after they try to fix a car, wanted to get back
3 to a basketball game, not bothering anybody.

4 What happens? Police vehicle rolls in, blocks
5 them in. And one of the officers testified, when they
6 asked him, What made it suspicious? He said, Dark. That
7 really wasn't fleshed out. But later on we heard with
8 regard to why was it a suspicious vehicle. Incredulously,
9 the testimony given was, well, there were two individuals
10 in the vehicle. There were two individuals in the
11 vehicle.

12 The Fourth Amendment requires more. We have a
13 right to privacy. Two individuals were in the vehicle.

14 Now there was also some testimony given that they
15 had been told they can ask people if they live in the
16 building. Again, we go back to them being inside the
17 compartment of the vehicle. And I am going to ask you for
18 a minute to try and put yourself in a place of Mr.
19 Jennings. I have done this -- imagine what it would be
20 like if you, any one of you, pulled into your own driveway,
21 and law enforcement was given carte blanche to roll right
22 up you, and behind your driveway, and say: Is this your
23 house? Is this your driveway? Do you live here? Can I
24 see the I.D. to be sure you live here? I think we would be
25 appalled. I think we would be mortified. And the thing

- Closing - LoFaro -

1 is, just because it's a high crime area doesn't mean there
2 is a trip to the Fourth Amendment rights, doesn't mean that
3 you can't sit there and drop a friend off at his house.
4 It's just ludicrous. It just doesn't make any sense. So
5 you know, clearly what we have here, again, is an ability
6 to get from point A to point B, without you know doing what
7 needs to be done.

8 And that was done, that was what was doing with
9 Mr. Jennings. You know, it's just not right. So, beyond
10 that, we have got a couple of charges here. And again, I
11 am going to impress upon you and ask you to, when you
12 deliberate, use common sense, common sense, common sense,
13 common sense, common sense. Because common sense is going
14 to get you where you need to be when you start looking at
15 this case.

16 Now, again, I love Mr. Centra. I don't want to
17 use his words against him. They were his words. There was
18 a minute amount of cocaine. There was a small amount of
19 cocaine. Well, there was a small amount of cocaine. You
20 saw the amount of cocaine. It was a tiny little bit of
21 cocaine which is even smaller than it was -- this bag
22 before they busted it up in a powder. There was nothing to
23 it. So, again, common sense.

24 You saw Officer Proud say that, you know: Oh,
25 yes, that's freestyle. Freestyle. Again, that's an

- Closing - LoFaro -

1 around-end. Freestyle. It's another way to say it's not
2 packaged in glassine envelopes. And I asked him if it was
3 a small amount? He said: No. No, it's bulk. Well, it's
4 not bulk. Common sense. Common sense. We all know what
5 the word "bulk" means. This isn't bulk. This isn't bulk.
6 Tied in a little bag. That's not something that you can
7 distribute. There was no intent to sell.

8 Clearly, if he was in possession of drugs at all,
9 it was for personal use, just by virtue of that tiny, tiny
10 little bag in the way it was packaged. We can't make an
11 around-end and say: Oh, yes, well, I know since it wasn't
12 packaged for sale, how do we get around the fact that it's
13 not packaged for sale? How do we get around the fact that
14 it's not packaged for sale? We say they sell it, when it's
15 not packaged for sale, we end up with this term called
16 "freestyle." How do we justify stopping a vehicle and the
17 yanking of the passengers out and stripping them of their
18 Fourth Amendment right? We will say they are making
19 furtive movements. Furtive movements.

20 You know, again I submit to you, furtive
21 movements, as you heard over here, it sounded scripted to
22 me. I don't know. I am hoping it sounded scripted to you
23 too. Because it generally is. Because it's what's said
24 over and over and over again. And furtive movements
25 really, generally, unfortunately means: Fishing

- Closing - LoFaro -

1 expedition. We want to grab -- excuse me -- we want to
2 grab these people, and see if they have anything on them.
3 We are going to see if they do, so we are going to find a
4 way to do it. That's what has been done. And is it right?
5 No, it's not. It's contrary to the Fourth Amendment of the
6 Constitution, the Bill of Rights. It allows him to be free
7 of unlawful searches and seizures.

8 Just like we all have a right to, you know, again
9 not to keep an example, we can all think of an example in
10 our own -- a friend's car in a shop, take me to the grocery
11 store. I have got to pick up some groceries. You go to
12 drop him off. You pull into their driveway, and you're
13 talking to them. You get, you get your car switched. It
14 doesn't make any sense. You know, you may think that there
15 should be different rules that apply in a high crime area.
16 But there has got to be something. There has to be
17 something more than when I am -- there has to be something
18 more than caprice. There has to be something more than
19 just a hunch. You know what? Why, just two guys in the
20 car. There is a car parked. There is two guys in it. We
21 better identify a way to get them out of that car and
22 search it. Um-um. Really, it's crap. It's not real. It
23 shouldn't have happened. This poor guy, all he did was
24 pick up a friend, bring him to his car, and try and get the
25 car started. And he went to drop him off. What happened

- Closing - LoFaro -

307

1 from there? You heard.

2 And again, it's not proper. I don't think by any
3 stretch of the imagination you can find any intent to sell.

4 And now let's, before I wasn't even going to talk
5 about this, since we had the witness come in to testify.
6 You heard his employer. Said he was gainfully employed.
7 Gainfully employed at the time he was arrested. Had been
8 working 25 to 30 hours a week, in construction. He made
9 mention of asbestos cards. He was gainfully employed. And
10 again, I don't have, I don't ever mean to impune the
11 dignity of anyone that gets on that witness stand. We got
12 to look again at common sense. Common sense. What is the
13 likelihood that Mr. Jennings, who was not a stupid man, who
14 lives in what we been told is a high crime area, is going
15 to say to a police officer, make this spontaneous
16 declaration and the utterance: Things are a little slow,
17 yes. I sell drugs on the side.

18 If did he, he should be on America's dumbest
19 criminals, because I don't think anybody would do,
20 certainly Mr. Jennings never would do that. So I am
21 telling you and asking you to look at that from a common
22 sense perspective, and evaluate what the likelihood is that
23 Mr. Jennings is going to go: Yes, things are a little
24 slow, I sell drugs on the side. That's not going to
25 happen. It didn't happen.

- Closing - LoFaro -

1 Not only did he didn't say it, but because he
2 doesn't sell drugs. He explained what he was doing with
3 the drugs. He thought it was Molly. He was celebrating.
4 He goes to school. Works. So, this isn't a drug dealer.
5 It's a guy that you heard was gainfully employed, by his
6 own testimony, his employer's testimony. And he testified
7 that he was going to school. So he was trying to do the
8 right thing, get his life in order. The fact that he lives
9 in an impoverished area where the crime rate is a little
10 bit higher doesn't deprive him of his constitutional
11 rights. He is entitled to those.

12 I know and I respectfully submit to you that when
13 you go back over all of the evidence that you have heard,
14 that you ask yourselves if that testimony didn't sound a
15 little contrived. It didn't sound a little bit too
16 rehearsed, a little bit too scripted with regard to, again:
17 Freestyle, furtive movements, suspicious vehicle. These
18 are all ways that law enforcement has used as of late to
19 try and get around the law and deny somebody the protection
20 of their Fourth, by our Constitution.

21 So, you know, I am asking you to return a verdict
22 of not guilty. And remember, that presumption of innocence
23 that he is cloaked with, remember that you heard up here,
24 and my final thought, again, is going to go over whatever
25 you must go over, but I think common sense is something

- Closing - LoFaro -

1 that all of you individuals are going to be able to use to
2 your benefit.

3 Again, everything is promulgated on common sense.
4 Apply the law. Use your common sense. And from a
5 layperson's perspective, just take a step back and go:
6 Wow, yes, this makes sense; this makes sense. But what,
7 you know, that didn't make any sense. He wouldn't do that.
8 And what did they say? Suspicious vehicle, furtive
9 movements? He wasn't doing anything. It's clear, I wasn't
10 doing anything. Common sense. So again, I thank you all
11 for your time. And I thank you for your service.

12 THE COURT: Thanks very much, Mr. LoFaro. Mr.
13 Centra, all set?

14 (Closing statement by Mr. Centra:)

15 MR. CENTRA: I am, Your Honor. Once again, I
16 would like to thank you all for your patience and your
17 attention during the course of -- the trial is one day, the
18 jury selection was too. But, I think you had you just
19 heard testimony from a number of witnesses here. The Judge
20 is going to ask you to consider their testimony during your
21 deliberations. Now as the Judge said, I am required to
22 prove the elements of each crime beyond a reasonable doubt.
23 And as I told you when you first started this thing, I
24 welcome that burden.

25 Now Tony Jennings is charged with two counts

- Closing - Centra -

310

1 here. First Count, being criminal possession of a
2 controlled substance in the third degree. The Second
3 Count, being criminal possession of a controlled substance
4 in the fifth degree.

5 Now both of these require me to prove that he
6 knowingly and unlawfully possesses a narcotic drug, in this
7 case: Cocaine. The difference between the two counts is,
8 the Judge will tell you, is "the intent to sell" portion
9 which you have heard throughout this trial, for the
10 criminal possession of controlled substance in the third
11 degree. And then for the fifth degree count, that deals
12 with the weight of the cocaine contained in, the actual
13 amount of the substance found on Mr. Jennings. As the
14 Judge will tell you, he has to show that there is five
15 hundred milligrams or more of cocaine contained in that
16 substance.

17 Now you heard during the course of this trial
18 that Tony Jennings was found with 2.57 grams and within
19 that 2.5 grams of substance was 1,262 milligrams of
20 cocaine. And that the amount that was possessed by Mr.
21 Jennings on that date would not be the amount that a person
22 would have for personal use. That the amount that he had
23 on him was indicative of the intent to sell. And based on
24 this information, I am going to ask you to find the
25 defendant guilty on both counts.

- Closing - Centra -

1 Now we heard from a number of witnesses today.
2 The first being Officer Jeremy Decker. And Officer Decker
3 told us on January 5th 2016, they were, him with Officer
4 Ettinger, they were patrolling Radisson Court area, the
5 Pioneer Homes. And I know that Mr. LoFaro got up here and
6 he started going on about the Fourth Amendment right.
7 Fourth Amendment right. Right to search and seizure. That
8 is, his rights were violated. And I want you to listen to
9 the Judge. That's one of the Judge's jobs was to determine
10 that. And he is going to ask you to look at the law as it
11 applies to these counts. And I am saying, these cops did
12 not violate any right. There is a procedure that they
13 have, and there is certain rights that they have to
14 determine certain things. And all they did in this case,
15 was shine a light on a vehicle, the two males in it. And
16 in a high crime area where they were told to patrol because
17 this is a high crime area. They were members of a specific
18 crime reduction team, and that's their job. They didn't
19 just rush up there. They didn't run in there. You heard
20 the testimony. They shined a light. That's when they saw
21 the movements of Mr. Jennings and the passenger of the
22 vehicle. It was those movements. What escalated it? You
23 heard these officers, they are trained. There is certain
24 policies, procedures that they go through. And furtive
25 movements are one of the things it looks like they were

- Closing - Centra -

1 trying to conceal something, so that raises their
2 suspicion. That allows them to go at least inquire to
3 what's going on, and that's what they did.

4 And when they went and inquired to what was going
5 on. Officer Decker stated that he approached the vehicle.
6 Officer Ettinger approached the vehicle, and they saw this
7 scale. You will be able to take a look at that. That
8 scale was sitting in the vehicle. And that raised their
9 suspicion, obviously, a little more. They saw the scale.
10 They saw the white substance on the scale. And that led
11 them to believe that there may be narcotics in the car, or
12 on in the possession of Mr. Jennings or the passenger in
13 the vehicle. So it was based on this that Mr. Jennings was
14 asked to step out of the vehicle.

15 Now Officer Decker's testimony is, once he
16 stepped out of the vehicle, he began to search Mr.
17 Jennings. And he ran. And there is a short chase, about
18 10 feet I believe he said, and he ended up catching him,
19 taking him into custody. There was a struggle. Like it's,
20 why did he run? It's because he knew he had the drugs on
21 him. He knew that he was going to get in trouble if he got
22 caught.

23 And on top of finding the cocaine in Mr.
24 Jennings' pocket, he also found the cash. It ended up
25 totaling about \$260 in cash, including the cash that was

- Closing - Centra -

1 found in the vehicle. The scale. And then the cellphones
2 that were found in the vehicle, Mr. Jennings stated were
3 there. I am just going to ask you to ask yourself, common
4 sense, why would somebody have two cellphones? Mr.
5 Jennings states: One cellphone for personal use; and one
6 cellphone just for Internet. It's 2017. That's -- it's
7 not reasonable to believe. The reason he had those two
8 cellphones was testified to by Sergeant Proud.

9 And then Tony Jennings was taken into custody.
10 And he was asked the pedigree information. And as both the
11 officers told you, he just gave up the information. He
12 never said he wasn't working. He stated that he was -- he
13 stated that he was employed in construction. But he was on
14 a down-time. So, he was selling, selling crack cocaine to
15 supplement that.

16 Then we heard from Jennifer Wilson, who was the
17 forensic chemist assigned to analyze the substance in this
18 case, the cocaine. She weighed that substance. She told
19 us she tested it. She told us the whole procedure that she
20 went through. And she told us how she initially received
21 the substance from the secure area, she normally grabbed it
22 from. And that she initially emptied the bag to get the
23 substance, to get the aggregate weight of all the powder in
24 here. This isn't all cocaine. This is the aggregate
25 weight of the substance of the whole. And as Sergeant

- Closing - Centra -

1 Proud told you, it's never 100 percent cocaine. It's cut
2 with stuff, something. And she told you that the aggregate
3 weight, the substance as a whole, was 2.576 grams. And she
4 told you that the substance that she tested came back
5 positive for cocaine. And she testified that cocaine is in
6 fact a narcotic drug. And she further tested the substance
7 to find out just how much cocaine was inside that 2.57
8 grams. And she told us that that substance that was in
9 Tony Jennings' possession contained 1,262 milligrams of
10 cocaine. And as Judge Dougherty will tell you when he
11 reads you the charge, to find Mr. Jennings guilty of
12 criminal possession of a controlled substance in the fifth
13 degree, you must find that he possessed 500 milligrams or
14 more of cocaine. Here, he possessed 1,262 milligrams.
15 That's well over the 500 milligrams that's required by law.

16 And finally we heard from Sergeant David Proud.
17 He told us about his experience in law enforcement. He has
18 almost thirty years investigating and participating in drug
19 investigations. He has been undercover. He has made
20 controlled buys of cocaine. He has had individuals make
21 controlled buys on his behalf. And he told us generally
22 how much individual doses of cocaine an individual user
23 would have on him. And he told us that each dose of
24 cocaine is approximately one-tenth of a gram. And now we
25 know that the substance found on the defendant, the cocaine

- Closing - Centra -

1 mixture, was 0.57 grams that the substance contained
2 cocaine. And what Sergeant Proud told us, that this is 25
3 individual doses of cocaine. Yes, it looks like it's a
4 small amount. But that's what the law says. And that's
5 what his experience tells us. And when I -- I know that
6 Mr. LoFaro is trying to use my words against me when I said
7 it was a minute amount. When I ask you to look at the law,
8 I know that it seems like a minute amount. But that's what
9 the law states. That's what I am asking you to look at
10 here. It seems like a minute amount. It's all relative,
11 in regards to everything else, as Sergeant Proud said.

12 Now that 25 individual doses of cocaine right
13 there shows Tony Jennings' intent to sell, on top of the
14 fact that he had \$260 cash on him. He had the two
15 cellphones. He had no drug-use paraphernalia at all. You
16 heard all the officers testify to that. And on top of
17 that, he had on him a scale. You're not using this if you
18 have a drug for personal use.

19 Now, you heard Mr. Jennings. He got up and he
20 testified here in court. And one of the things the Judge
21 is going to ask you to do, and one of the things I brought
22 up during our jury selection is that you're the judge of
23 credibility here. You're the ones that have to take a look
24 and determine the credibility of the witnesses. I want you
25 to listen to the Judge's instructions carefully. That you

- Closing - Centra -

1 alone get to determine the truthfulness, the accuracy, the
2 testimony of each witness. He will tell you that there is
3 a certain thing that you can look for to determine the
4 credibility, like: Was the testimony plausible? Likely to
5 be true? Did the witness have a bias that could affect
6 their truthfulness of the statement? Did the witness have
7 interests in the outcome of the case? Did the witness make
8 any inconsistent statements? Or did the witness have a
9 motive to lie? Those are the things I am going to ask you
10 to consider when looking in determining the witnesses that
11 you heard here today.

12 I want you to take a look at Tony Jennings'
13 testimony. Now, this whole time they had been painting him
14 out like he's the victim here. That the police harassed
15 him. That they planted a scale on him. That they beat him
16 up. That you know, this was all, this was all for nil.
17 That this shouldn't have happened.

18 And like I said, I want you to just look at the
19 testimony of Officers Decker and Ettinger, and then look at
20 the testimony of Tony Jennings. It's obviously a great
21 divide there. And ask yourselves: Who do you believe the
22 credible witnesses are.

23 Now Mr. Jennings gave you the story about how he
24 was violated. And each of the facts he gave can
25 immediately poke holes in the legal theory here, the law

- Closing - Centra -

1 that the Judge is going to read to you. And you heard Mr.
2 Jennings up there, and he was in fact talking about the law
3 himself. He seemed to look into, he brought up the
4 charges. I want you to look at the testimony that he gave.
5 He admitted on the stand that he was not truthful with
6 Officer Decker. He admitted that on numerous occasions.
7 Officer Decker asked him: Are there drugs in the vehicle?
8 Do you have any drugs on you? He said, No. Why did he say
9 no? Because he knew he had drugs on him, and he knew if he
10 was caught, that he was going to get in trouble.

11 Like I said, his testimony just conveniently
12 pokes holes. He admitted to, he admitted to possessing the
13 drugs, right? But conveniently, he didn't think it was
14 cocaine. He thought it was Molly.

15 He says that the scale was planted. No scale, no
16 intent to sell. He says he didn't admit to selling
17 cocaine. Once again, it goes to the intent to sell.

18 And finally, like I said, he gets the two phones.
19 One is for personal use and one is for Internet. Like I
20 said, who has two phones for those purposes?

21 Like I said, the defense wants you to believe
22 that this is a case where his rights were extremely
23 violated. And like I said, you know, that's why we have
24 the court system. That's why the Judge determines whether
25 these searches -- these seizures, rather, were adequate.

- Closing - Centra -

318

1 And all I am stating here is that those officers approached
2 where they were allowed to be, Pioneer Homes. The Syracuse
3 Housing Authority asked them to be there. They are in a
4 high crime area. They are doing their job patrolling. And
5 all they simply did was shine a light. And it's based on
6 what they saw, the step-by-step, the procedure that they
7 are trained to do, which led them to asking Mr. Jennings to
8 get out of the vehicle, to what they saw. They shined the
9 lights, step one. They see the movements which raised
10 their suspicion. They, once again, walk over to the
11 vehicle. They see the scale right there. Their suspicions
12 just keep rising. That's why they did what they did. They
13 weren't out there just looking for Mr. Jennings to harass
14 him. They definitely didn't plants drugs on him. And he
15 admitted that.

16 Like I said, the Judge will tell you, to prove
17 criminal possession of a controlled substance in the third
18 degree, it must be shown that Tony Jennings possessed a
19 narcotic drug with the intent to sell it. With criminal
20 possession of controlled substance in the fifth degree, it
21 must be shown that Tony Jennings possessed a drug that
22 contained 500 milligrams or more of cocaine.

23 We know he possessed it. It was in his pocket.
24 We know that he knew it was in there because that's why he
25 ran from Officer Decker. How do we know that he had the

- Closing - Centra -

1 intent to sell? Like I said, many reasons. 25 individual
2 doses of cocaine. No individual user would possess that.
3 He was found with cash. And the two cellphones. He had
4 the scale to weigh the cocaine for sale. There was no
5 drug-use paraphernalia found on him. And he also admitted
6 to the officers that he possessed it with the intent to
7 sell to make some money on the down-time while he wasn't
8 working.

9 Finally, we know that the drugs he possessed were
10 1,262 milligrams of cocaine contained in there. We heard
11 that from the testimony of Jennifer Wilson.

12 And based on this evidence, I am going to ask you
13 all to find Tony Jennings guilty. Guilty of criminal
14 possession of controlled substance in the third degree, and
15 guilty of criminal possession of controlled substance in
16 the fifth degree. Once again, I thank you all for your
17 time.

18 THE COURT: Thank you, Mr. Centra. Ladies and
19 gentlemen, I think it is a good time to break. It's 20
20 after 3:00, I will give you my final admonitions. I would
21 like you here tomorrow at about 9:45. My calendar is
22 small. We start normally between 9:00 and 9:15. I hope to
23 be done with it by 10 o'clock. And what I will do is, at
24 10:00 or when we start, I will read you the charge. And
25 that usually takes between 30 and 45 minutes. I will read

320

- Jury recess for day -

1 you the charge.

2 The reason I want you to come in a little earlier
3 is because we will have lunch menus for you. And you can
4 pick out what you want for lunch. We will give you the
5 charge. We will finish that sometime around eleven
6 o'clock, and soon after that, you will get your lunches,
7 and we can have you deliberating. So, hopefully that will
8 go all according to plan.

9 Your job part is to be here by 9:45. And before
10 that, as far as this evening goes, this afternoon and this
11 evening, do not converse either among yourselves or with
12 anyone else about anything related to the case. Of course,
13 don't take any money or anything else regarding this case.
14 Promptly report to me any incident within your knowledge
15 involving any attempt by any person to influence you in any
16 way. You're not going to visit the Pioneer Homes or
17 anywhere else that has been indicated as a potential place
18 where this occurred. Certainly, don't read any news
19 accounts or listen to any accounts. Don't attempt to
20 research any fact, issue or law regarding this case. And
21 don't communicate with anyone about the case by any means
22 including social media. All right?

23 With that, I wish you all a great afternoon, a
24 great night. See you tomorrow morning. And we will give
25 you the charge then. Thank you.

- Trial procedure discussion -

321

1 (Jury left the courtroom at 3:22 p.m.)

2 THE COURT: All right. We are outside the
3 presence of the jury with Mr. Centra, Mr. LoFaro and Mr.
4 Jennings. And gentlemen, we are ready to charge the jury
5 in the morning. Is there anything else we need to talk
6 about this evening?

7 MR. CENTRA: Not from the People, Your Honor.

8 MR. LOFARO: No, Your Honor.

9 THE COURT: All right. The exhibits, there is
10 one photograph, I think?

11 MR. LOFARO: Yes, Judge.

12 THE COURT: You put in?

13 MR. LOFARO: Yes.

14 THE COURT: And Joe, you have the two exhibits?
15 What I normally do is if there is no objection by either of
16 you, as soon as I am done with the charge, we send the
17 exhibits in to the jury.

18 MR. CENTRA: That's fine with me.

19 THE COURT: No problem.

20 MR. LOFARO: Fine, Judge.

21 THE COURT: That way they don't have to write a
22 note and ask. And obviously, we will keep you guys close.
23 We will get your cellphone numbers, and you will be close
24 in case they need anything as the day goes on tomorrow.

25 As I said, we are going to order their lunches.

- Recess for day -

1 Before they even come in here, we will have those, we get
2 that moving along. And finish up in the morning, okay?

3 MR. LOFARO: Sounds good.

4 MR. CENTRA: Sounds good.

5 THE COURT: Thanks. Thanks, Pat.

6 (Recessed for the day at 2:23 p.m.)

7 * * *

8 MORNING SESSION - 2/8/17

9 (Trial continued on Wednesday, February 8, 2017, at 10:23 a.m.)

10 THE COURT: Gentlemen, why don't you come up. I
11 have got a copy of the verdict sheet.

12 (Blank Verdict sheet marked Court's Exhibit A.)

13 THE COURT: We are back in session with Mr.
14 Centra, Mr. LoFaro, Mr. Jennings.

15 And gentlemen, before I bring the jury in, there
16 are two charges that I am going to be reading to the jury.
17 One is about Mr. Jennings being in custody. I will, again,
18 I will note, no negative inference against him due to his
19 financial inability to post bail.

20 Also going to talk about the fact that Mr.
21 Jennings was given the opportunity to wear civilian clothes
22 and chose not to. And you're not to make any negative
23 interference or speculate on the reason for that.

24 And finally, Mr. Jennings had the opportunity to
25 appear in front of the jury without restraints, and chose

- Jury charge discussion - 2/8/17 -

1 not to. And I will talk to them about that.

2 And any objection to that, Mr. Centra?

3 MR. CENTRA: No, Your Honor.

4 THE COURT: Mr. LoFaro?

5 MR. LOFARO: No, Your Honor.

6 THE COURT: All right. And there has been a lot
7 of talk during the course of this trial about whether the
8 search of Mr. Jennings was lawful or not. Here is what I
9 am going to say about that: It's not the function of the
10 jury to decide whether or not the evidence that was
11 received in trial was obtained as a result of an unlawful
12 search. It is the Court's responsibility to determine the
13 legal issue of whether property was obtained from a
14 defendant as a result of an unlawful search and seizure,
15 prior to trial. And in this case, as required by law, the
16 Court conducted an evidentiary hearing prior to trial to
17 ascertain the circumstances under which the property was
18 obtained, and determined whether the evidence was obtained
19 in contravention of the defendant's constitutional rights.
20 The Court ruled that the tangible property obtained from
21 the defendant in this case did not result from an unlawful
22 search and seizure, and was therefore admissible, as
23 evidence at trial. The legal issue of whether the tangible
24 property received in evidence against this defendant was
25 obtained as a result of an unlawful search and seizure was

- Jury charge discussion -

1 previously determined by the Court prior to trial, as
2 required by law. You are not to make your own
3 determination on this legal issue in your deliberations.
4 You're bound by the Court's ruling as to the admissibility
5 of such evidence and are not permitted to reconsider the
6 Court's ruling in your deliberations. Mr. Centra, any
7 objection to that?

8 MR. CENTRA: No, Your Honor.

9 THE COURT: Mr. LoFaro?

10 MR. LOFARO: Yes. I object, Your Honor. Only
11 because prior to us breaking yesterday, you had asked Mr.
12 Centra and I if we had any jury charges that we would
13 request other than the standard jury charges. We both
14 said, no. There was no request that jury charge be made,
15 which is outside the standard jury charges. So I would
16 object to that.

17 THE COURT: And I note your objection. And I
18 appreciate it, Mr. LoFaro. I will say that my job as the
19 judge is to instruct them on the law, not the facts. Both
20 of you made some comments about the legality of the search.
21 It wasn't just Mr. LoFaro. And I, to tell you the truth,
22 was taken aback that this continued during the course of
23 the trial because there has been a suppression hearing.
24 And unlike a confession that cannot be relitigated in front
25 of a jury, the case law is clear. The suppression issue is

- Jury charge discussion -

1 done by the judge. It is the law of the case. And in this
2 case, the judge determined that it was lawful; and that's
3 the end of it as far as a question of fact goes. It
4 becomes a question of law. Which, it's a, the
5 determination has already been made.

6 So understanding the objection of Mr. LoFaro, I
7 am going to give that instruction. It wasn't something
8 requested by Mr. Centra or Mr. LoFaro. I feel it's my duty
9 to alert the jury as to that.

10 THE DEFENDANT: Excuse me, Your Honor?

11 THE COURT: Hold on, Mr. Jennings. I am not
12 done.

13 THE DEFENDANT: Okay.

14 THE COURT: We also talked about the exhibits
15 going in without the jury requesting those exhibits. I
16 know Mr. Centra has the three of them, correct, gentlemen?

17 MR. CENTRA: I have two.

18 THE COURT: And Mr. LoFaro you have the third?

19 MR. LOFARO: Yes.

20 THE COURT: We will put those together. We are
21 going to send it in with the verdict sheet, which is Court
22 Exhibit A. I have given a copy to both counsel.

23 Mr. Centra, any objection to the verdict sheet?

24 MR. CENTRA: No, Your Honor.

25 THE COURT: Mr. LoFaro?

- Jury charge discussion -

1 MR. LOFARO: No, Your Honor.

2 THE COURT: All right. So the other thing,
3 gentlemen, I need to impanel a new Grand Jury around eleven
4 o'clock. So what I intend to do is charge the jury. We
5 will send them out as soon as I am done. And then we are
6 going to tell them that we are going to have a break
7 between 11:00 and about 12:30, where they can certainly
8 send out notes. But we won't be able to get back to them
9 until then because my court staff also needs a break,
10 especially Mr. Reagan who has to impanel the Grand Jury
11 with me, okay? All right.

12 THE DEFENDANT: Could I speak?

13 THE COURT: Yes, Mr. Jennings. Do you want to
14 say something?

15 THE DEFENDANT: Thank you. Well, I object, you
16 know, in regards to all that evidence that has represented
17 to the jury, to the jury, Your Honor. It was insufficient.
18 And one of the testimony was faulty. I provided the Court
19 with documentation from city investigators that
20 investigated these officers in regards to this case, and
21 the charges charged and they found him guilty of
22 misconduct. And this was the chief of police, who
23 cooperated with these investigators. I provided the courts
24 with these papers, and they haven't even been taken into
25 consideration. I wasn't allowed to present that to the

- Argument - Jennings -

1 jury. My whole defense is being stripped right now as to
2 wherein these officers obtained evidence illegally. They
3 violated my constitutional rights on illegal search and
4 seizure. They never had probable cause to even pull me out
5 of the car -- a criminal charge.

6 THE COURT: Hold on, Mr. Jennings. That issue
7 was decided by I believe it was Judge Hafner.

8 THE DEFENDANT: Judge Hafner made a decision in
9 error, Your Honor.

10 THE COURT: Listen, listen.

11 THE DEFENDANT: I have it. Do you want --

12 THE COURT: You can make that decision. See, the
13 legal process has steps. Should you get convicted -- which
14 I don't know that that's going to happen -- should you get
15 convicted, you can appeal all of these things. If you get
16 acquitted, none of them matter. But the decisions of the
17 Court have been followed all the way through. Mr. LoFaro
18 has done a fantastic job on your behalf, I must tell you.

19 THE DEFENDANT: Yes, he has, Your Honor.

20 THE COURT: Certainly things you wanted him to
21 bring up, he could not bring up because the decisions,
22 those have already been decided. But you have the right to
23 appeal all of these things. So let's get started with our.

24 THE DEFENDANT: I understand, Your Honor. But
25 you're stripping me of my whole defense.

- Argument - Jennings -

1 THE COURT: I am not.

2 THE DEFENDANT: By explaining to the jury that
3 they are not to consider the fact that the search was
4 conducted illegally, and they had no probable cause.

5 THE COURT: I understand.

6 THE DEFENDANT: I have no defense. If you
7 instruct the jury to look at the evidence in light of my
8 testimony that I provided, and my whole defense of what my
9 lawyer did.

10 THE COURT: Mr. Jennings, I understand your
11 concern. I made my ruling. I am making my ruling on the
12 law. And it can be appealed, should you lose.

13 THE DEFENDANT: Okay.

14 THE COURT: Have the jury.

15 THE DEFENDANT: For the record, Your Honor, I
16 object to all evidence and testimony.

17 THE COURT: Yes, and you have done so.

18 (The jury entered the courtroom at 10:32 a.m.)

19 THE COURT: Good morning, ladies and gentlemen.
20 Thank you again for your attendance. We are here with the
21 jury. We are here with both counsel, Mr. Centra, Mr.
22 LoFaro, and Mr. Jennings.

23 And we have heard the summation of counsel
24 yesterday afternoon. It is now time to hear my
25 instructions on the law. I want to commend both the

- Court Charge -

1 attorneys for the job they did representing their sides of
2 the case. They are both professional; I believe they both
3 did a very good job.

4 Folks, I am going to instruct you on the law. I
5 am going to review the general principles of law that apply
6 to this case, and in all criminal cases. Then I will
7 define the crimes charged in this case, explain the law
8 that applies to those, and spell out the elements of each
9 charged crime. And then I am going to outline the process
10 of jury deliberations.

11 The law requires in all criminal cases that the
12 Court set bail. Here, Mr. Jennings has been unable to make
13 the bail that was set. You are to draw no inference
14 whatsoever against Mr. Jennings due to his financial
15 inability to post bail. That is not evidence of anything.
16 The defendant Mr. Jennings has the right to appear in front
17 of the jury at trial wearing civilian clothes; and the
18 right to appear in front of jury wearing prison garb if he
19 so chooses. The defendant has considered his right to
20 appear in front of you in prison garb. You're not to
21 speculate on the reason for the defendant choosing to wear
22 prison garb. You're not to have any sympathy for or bias
23 against the defendant because of the clothes he chose to
24 wear, I am sorry, during the trial.

25 The fact that the defendant has chosen to appear

- Court Charge -

1 in front of the jury at trial, in prison garb, has no
2 relevance to your determination of whether the defendant is
3 guilty or not guilty of the charged crime and should not be
4 considered by you in your deliberations.

5 Also, Mr. Jennings has a right to appear in front
6 of the jury at trial without any restraints. And the right
7 to appear in front of the jury at trial in restraints if he
8 chooses. Neither the Court nor the Sheriff's Department
9 required the defendant to be restrained. The defendant
10 chose to appear in front of the jury in restraints. You're
11 not to speculate on the reason for the defendant choosing
12 to appear in front of the jury in restraints.

13 You're not to have any sympathy for or bias
14 against Mr. Jennings because of the fact that he chose to
15 be in restraints. The fact that the defendant has chosen
16 to appear in front of the jury in restraints has no
17 relevance to your determination of whether the defendant is
18 guilty or not guilty of a charged crime, and should not be
19 considered by you in your deliberations.

20 During these instructions, I am not going to
21 summarize the evidence. If there is any reference to
22 evidence or my failure to refer to evidence that expresses
23 no opinion about the truthfulness, accuracy, or importance
24 of any particular evidence. In fact, nothing I have said
25 in the course of this trial was meant to suggest that I

- Court Charge -

1 have an opinion about the case. If you have formed an
2 impression that I do have an opinion, you must put it out
3 of your mind and disregard it. It's not my responsibility
4 to judge the evidence here. That's yours. You and you
5 alone are the judges of the facts. You and you alone are
6 responsible for deciding whether the defendant is guilty or
7 not guilty.

8 It is not the function of the jury to decide
9 whether or not evidence that was received at trial was
10 obtained as a result of an unlawful search or seizure. It
11 is the Court's responsibility to determine the legal issue
12 of whether tangible property was obtained from a defendant
13 as a result of an unlawful search or seizure prior to this
14 trial.

15 In this case, as required by law, the Court
16 conducted an evidentiary hearing prior to trial to
17 ascertain the circumstances under which the tangible
18 property was obtained, and determined whether the evidence
19 was obtained in contravention of the defendant's
20 constitutional rights. The Court ruled that the tangible
21 property obtained from the defendant in this case did not
22 result from an unlawful search and seizure, and was
23 therefore admissible as evidence in this trial.

24 The legal issue of whether the property received
25 in evidence against the defendant was tainted as a result

- Court Charge -

1 of an unlawful search and seizure was previously determined
2 by this Court prior to trial, as required by law. You are
3 not to make your own determination on this legal issue in
4 your deliberations. You are bound by the Court's ruling as
5 to the admissibility of such evidence, and are not
6 permitted to reconsider the Court's ruling in your
7 deliberations.

8 In your deliberations, you may not consider or
9 speculate about matters relating to sentence or punishment.
10 If there is a verdict of guilty, it will be my
11 responsibility to impose an appropriate sentence.

12 When you judge the facts, ladies and gentlemen,
13 you are to consider only the evidence. The evidence in
14 this case includes the testimony of the witnesses, and the
15 exhibits that were received in evidence. Testimony that
16 was stricken from the record or to which an objection was
17 sustained must be disregarded by you.

18 Exhibits that were received in evidence will be
19 sent in to the deliberation room with you for your
20 inspection and consideration.

21 In evaluating the evidence, you may consider any
22 fact that is proven and any inference that may be drawn
23 from such fact. To draw an inference means to infer, find,
24 conclude that a fact exists, or does not exist based upon
25 proof of some other fact or facts. An inference must be

- Court Charge -

1 only drawn from a proven fact or facts, and then only if
2 the inference flows naturally, reasonably and logically
3 from the proven fact or facts. Not if it is speculative.

4 Therefore, in deciding whether to draw an
5 inference, you must look at and consider all the facts in
6 the light of reason, common sense, and experience.

7 We are now turning to the fundamental principles
8 of our law that apply in all criminal cases: The
9 presumption of innocence, the burden of proof, and the
10 requirement of proof beyond a reasonable doubt. Throughout
11 these proceedings the defendant is presumed to be innocent.
12 As a result, you must find the defendant not guilty unless
13 on the evidence presented at this trial you conclude that
14 the People have proven the defendant guilty beyond a
15 reasonable doubt. In determining whether the People have
16 satisfied their burden of proving defendant's guilt beyond
17 a reasonable doubt, you may consider all the evidence
18 presented, whether by the People or by the defendant. In
19 doing so, however, remember that even though the defendant
20 introduced evidence, the burden of proof remains on the
21 People.

22 The defendant is not required to prove that he is
23 not guilty. In fact, the defendant is not required to
24 prove or disprove anything. To the contrary, the People
25 have the burden of proving the defendant guilty beyond a

- Court Charge -

1 reasonable doubt. That means before you can find the
2 defendant guilty of a crime, the People must prove beyond a
3 reasonable doubt every element of the crime, including that
4 the defendant is the person who committed that crime.

5 The burden of proof never shifts from the People
6 to the defendant. If the People fail to satisfy their
7 burden of proof, you must find the defendant not guilty.
8 If the People satisfy their burden of proof, you must find
9 the defendant guilty.

10 And what does our law mean when it requires proof
11 of guilt beyond a reasonable doubt? The law uses that term
12 "proof beyond a reasonable doubt" to tell you how
13 convincing the evidence of guilt must be to permit a
14 verdict of guilty. The law does recognize that in dealing
15 with human affairs there are very few things in this world
16 that we know with absolute certainty. Therefore, the law
17 does not require the People to prove a defendant guilty
18 beyond all possible doubt. On the other hand, it is not
19 sufficient to prove that the defendant is probably guilty.
20 In a criminal case, the proof of guilt must be stronger
21 than that. Again, it must be beyond a reasonable doubt.

22 A reasonable doubt is an honest doubt of the
23 defendant's guilt for which a reason exists based upon the
24 nature and quality of the evidence. It's an actual doubt,
25 not an imaginary doubt. It is a doubt that a reasonable

- Court Charge -

1 person acting in a matter of this importance would be
2 likely to entertain because of the evidence that was
3 presented or because of the lack of convincing evidence.
4 Proof of guilt beyond a reasonable doubt is proof that
5 leaves you so firmly convinced of the defendant's guilt
6 that you have no reasonable doubt of the existence of any
7 element of the crime, or of the defendant's identity as the
8 person who committed the crime.

9 In determining whether the People have proven the
10 defendant's guilt beyond a reasonable doubt you should be
11 guided solely by a full and fair evaluation of the
12 evidence. After carefully evaluating the evidence, each of
13 you must decide whether or not that evidence convinces you
14 beyond a reasonable doubt of the defendant's guilt.
15 Whatever your verdict may be, ladies and gentlemen, it must
16 not rest upon baseless speculation, nor may it be
17 influenced in any way by bias, prejudice, sympathy, or by a
18 desire to bring an end to your deliberations or to avoid an
19 unpleasant duty. If you are not convinced beyond a
20 reasonable doubt that the defendant is guilty of a charged
21 crime, you must find the defendant not guilty of that
22 crime. If you are convinced beyond a reasonable doubt that
23 the defendant is guilty of a charged crime, you must find
24 the defendant guilty of that crime.

25 As the jury, as the judges of the facts, you

- Court Charge -

1 alone determine the truthfulness and accuracy of the
2 testimony of each witness. You must decide whether a
3 witness told the truth and was accurate, or instead,
4 testified falsely or was mistaken. You must also decide
5 what importance to give to the testimony you accept as
6 truthful and accurate. Again, it's the quality of the
7 testimony that controls, not the number of witnesses who
8 testify.

9 If you find any witness has intentionally
10 testified falsely as to any material fact, you may
11 disregard the witness' entire testimony, or you may
12 disregard so much of it as you find was untruthful, and
13 accept so much of it as you find to have been truthful and
14 accurate.

15 There is no particular formula for evaluating the
16 truthfulness and accuracy of another person's statements or
17 testimony. You bring to this process all of your varied
18 life experiences. In life, you frequently have to decide
19 the truthfulness and accuracy of statements made to you by
20 other people. The same factors that you would use to make
21 those decisions should be used here when evaluating the
22 testimony.

23 Some of the factors you may wish to consider in
24 evaluating the testimony of witnesses are: Did the witness
25 have an opportunity to see or hear the events upon which he

1 or she testified? Did the witness have the ability to
2 recall those events accurately? Was the testimony of the
3 witness plausible and likely to be true? Or was it
4 implausible and not likely to be true? Was the testimony
5 of the witness consistent or inconsistent with other
6 testimony or evidence in the case? Did the manner in which
7 the witness testify reflect upon the truthfulness of that
8 witness' testimony? To what extent if any did the witness'
9 background, training, education or experience affect the
10 believability of that witness' testimony? Did the witness
11 have a bias, hostility or some other attitude that affected
12 the truthfulness of the witness' testimony?

13 You may consider whether a witness had or did not
14 have a motive to lie. If a witness had a motive to lie,
15 you may consider whether and to what extent if any that
16 motive affected the truthfulness of that witness'
17 testimony. If a witness did not have a motive to lie, you
18 may consider that as well in evaluating the witness'
19 truthfulness.

20 You may consider whether a witness hopes for or
21 expects to receive a benefit for testifying. If so, you
22 may consider whether and to what extent it affected the
23 truthfulness of the witness' testimony.

24 You may consider, folks, whether a witness has
25 any interest in the outcome of the case, or instead,

- Court Charge -

1 whether the witness has so no such interest. A defendant
2 who testifies is a person who has an interest in the
3 outcome of the case. You are not required to reject the
4 testimony of an interested witness or to accept the
5 testimony of a witness who has no interest in the outcome
6 of the case. You may, however, consider whether an
7 interest in the outcome or the lack of such interest
8 affected the truthfulness of the witness' testimony. You
9 may also consider in determining credibility whether a
10 witness has been convicted of a crime, or has engaged in
11 criminal conduct and if so, whether and to what extent it
12 affects the truthfulness of that witness' testimony.

13 You are not required to reject the testimony of a
14 witness who has been convicted of a crime or has engaged in
15 criminal conduct, or to accept the testimony of a witness
16 who has not. You may, however, consider whether a witness'
17 criminal conviction or conduct has affected the
18 truthfulness of that witness's testimony.

19 With respect to the defendant, such prior
20 convictions or criminal conduct are not evidence of the
21 defendant's guilt in this case, or evidence that the
22 defendant is a person who is disposed to commit crimes.
23 You are permitted to consider such convictions or conduct
24 only to evaluate the defendant's truthfulness. You may
25 consider in determining credibility whether a witness made

- Court Charge -

339

1 statements at this trial that are inconsistent with each
2 other. You may also consider whether a witness made
3 previous statements that are inconsistent with hers or his
4 trial testimony.

5 If a witness made inconsistent statements or
6 omissions, you may consider whether and to what extent they
7 affect the truthfulness or accuracy of that witness'
8 testimony here at this trial. The content of a prior
9 inconsistent statement is not proof of what happened. You
10 may use that evidence of a prior inconsistent statement
11 only to evaluate the truthfulness or for accuracy of the
12 witness' testimony here at trial. You may consider whether
13 a witness' testimony is consistent with the testimony of
14 other witnesses or with evidence in the case. If there
15 were inconsistencies by and among witnesses, you may
16 consider whether they were significant inconsistencies
17 related to important facts, or instead were the kind of
18 minor inconsistencies that one might expect from multiple
19 witnesses to the same event.

20 In this case, ladies and gentlemen, we heard the
21 testimony of police officers. The testimony of a witness
22 should not be believed solely and simply because the
23 witness is a police officer. And at the same time, a
24 witness' testimony should not be disbelieved solely and
25 simply because a witness is a police officer. You must

- Court Charge -

1 evaluate a police officer's testimony in the same way you
2 would evaluate the testimony of any other witness.

3 You will recall that we heard from Jennifer
4 Wilson in this trial about certain scientific, medical or
5 technical matters, and offered an opinion on such matters.
6 Miss Wilson testified as an expert in the field of forensic
7 chemistry. Ordinarily, a witness is limited to testify
8 about facts and is not permitted to give an opinion.
9 Where, however, scientific, medical, technical or other
10 specialized knowledge will assist the jury to understand
11 evidence, or to determine a fact at issue, a witness with
12 expertise in a specialized field may render an opinion
13 about such matters. You should evaluate the testimony of
14 any such witness just as you would the testimony of any
15 other witness. You may accept -- you may accept or reject
16 such testimony in whole or in part just as you may with
17 respect to the testimony of any other witness.

18 In deciding whether to accept such testimony, you
19 should consider the following: The qualifications and the
20 believability of the witness; the facts and other
21 circumstances upon which the witness' opinion was based;
22 the reasons given for the opinion; whether the witness'
23 opinion is consistent or inconsistent with other evidence
24 in the case; and the accuracy or inaccuracy of any assumed
25 or hypothetical fact upon which the opinion was based.

- Court Charge -

341

1 Let me now instruct you on the law applicable to
2 the charged offenses. Those offenses are: Criminal
3 possession of a controlled substance in the third degree;
4 and criminal possession of a controlled substance in the
5 fifth degree. Under our law, a person is guilty of
6 criminal possession of a controlled substance in the third
7 degree when that person knowingly and unlawfully possesses
8 a narcotic drug with the intent to sell it.

9 Some of the terms used in this definition have
10 their special meaning in our law. I will give you the
11 definition of: Narcotic drug, possess, knowingly,
12 unlawfully, sell, and intent. The term narcotic drug
13 includes cocaine. Possess means to have physical
14 possession or otherwise exercise dominion and control over
15 tangible property.

16 A person knowingly possesses cocaine when that
17 person is aware that he is in possession of cocaine. A
18 person unlawfully possesses cocaine when that person has no
19 legal right to possess it. Under our law, with certain
20 exceptions not applicable here, a person has no legal right
21 to possess cocaine. Sell means to sell, exchange, give or
22 dispose of to another. Intent means a person's conscious
23 objective or purpose. Thus, a person possesses with intent
24 to sell it when his conscious objective or purpose is to
25 sell the cocaine.

- Court Charge -

1 In order for you to find the defendant guilty of
2 this crime, the People are required to prove from all the
3 evidence in the case beyond a reasonable doubt each of the
4 following three elements: That on or about January 5th
5 2016, in Onondaga County, the defendant Tony Jennings
6 possessed cocaine. Two, that the defendant did so
7 knowingly, and unlawfully. And Three, that the defendant
8 possessed the cocaine with the intent to sell it.

9 If you find the People have proven beyond a
10 reasonable doubt each of those elements, you must find the
11 defendant guilty of the crime of criminal possession of a
12 controlled substance in the third degree as charged in the
13 First Count. On the other hand, if you find the People
14 have not proven beyond a reasonable doubt any one or more
15 of those elements, you must find the defendant not guilty
16 of the crime of criminal possession of a controlled
17 substance in the third degree.

18 The Second Count, ladies and gentlemen, is
19 criminal possession of a controlled substance in the fifth
20 degree. A person is guilty of criminal possession of a
21 controlled substance in the fifth degree when that person
22 knowingly and unlawfully possesses cocaine, and said
23 cocaine weighs 500 milligrams or more. I have given you the
24 definition of possess, knowingly, and unlawfully. In order
25 for you to find the defendant guilty of this crime, the

- Court Charge -

1 People are required to prove from all the evidence in the
2 case beyond a reasonable doubt each of the following three
3 elements: That on or about January 5th 2016, in Onondaga
4 County, the defendant Tony Jennings possessed cocaine. And
5 Two, that the defendant did so knowingly and unlawfully.
6 And Three, that the cocaine weighed 500 milligrams or more.

7 If you find the People have proven beyond a
8 reasonable doubt each of those elements, you must find the
9 defendant guilty of the crime of criminal possession of a
10 controlled substance in the fifth degree. On the other
11 hand, if you find the People have not proven beyond a
12 reasonable doubt any one or more of those elements, you
13 must find the defendant not guilty of the crime of criminal
14 possession of a controlled substance in the fifth degree,
15 which is our Second Count.

16 Folks, your verdict as to each count that you
17 consider, whether guilty or not guilty, must be unanimous.
18 That is, each and every juror must agree to it. To reach a
19 unanimous verdict, you must deliberate with the other
20 jurors. That means you should discuss the evidence and
21 consult with other each other. Listen to each other. Give
22 each other's views careful consideration, and reason
23 together when considering the evidence. And when you
24 deliberate, you should do so with a view towards reaching
25 an agreement if that can be done without surrendering

- Court Charge -

1 individual judgment. Each of you must decide the case for
2 yourself, but only after a fair and impartial consideration
3 of the evidence with the other jurors. You should not
4 surrender an honest view of the evidence simply because you
5 want the trial to end or you are outvoted. At the same
6 time, you should not hesitate to re-examine your views and
7 change your mind if you become convinced that your position
8 was not correct.

9 You are going to see the exhibits that were
10 received in evidence. Again, we are going to send those in
11 to you with the verdict sheet.

12 You may also have the testimony of any witness
13 read back to you in whole or in part. If you want a
14 readback, write me a note telling me what testimony you
15 wish to hear. If you are only interested in hearing a
16 portion of a witness' testimony, please specify in your
17 note which witness and with as much detail as possible
18 which part of the testimony you want to hear.

19 Of course when testimony is read back, questions
20 to which an objection was sustained, or material was
21 otherwise struck from the record is not read back.

22 If you have a question on the law write me a
23 notes specifying what you want me to review with you.

24 Mr. Reagan has taken down every word of the
25 trial. If you want to hear Jennifer Wilson's direct

- Court Charge -

1 testimony -- write a note: We would like to hear Jennifer
2 Wilson's testimony. Your foreperson will sign your note.
3 I don't know how your handwriting is, sir. So let's have
4 it written by somebody that has good penmanship. But we
5 have the foreperson sign it, just to indicate to us it
6 comes from the jury. The more specificity you can give us,
7 the better. But if you want Miss Wilson's entire testimony
8 or any other witness, we will get that done. It does take
9 time for testimony to be read back to you because Mr.
10 Reagan has to find it. We have to agree on it, and then we
11 read it back.

12 If you want anything regarding the law, that's
13 easy because I have it right here in front of me. And as
14 soon as we can get everybody back together, we will give
15 you any readback you want on the law, if you need it.

16 Under our law, our first juror selected is known
17 as the foreperson. And I have my final juror, it's Mr.
18 McCarthy?

19 JUROR NO. 1: Yes.

20 THE COURT: Mr. McCarthy, you are the foreperson
21 during deliberations. The foreperson's opinion and vote
22 are not entitled to any more importance than that of the
23 other jurors. What we ask the foreman to do, as I
24 mentioned, to sign any written note that the jury sends to
25 the Court. The foreperson doesn't have to write it or

- Court Charge -

1 agree with it. We just have the signature, as I said, to
2 make sure we know it's coming from the jury.

3 When the jury has reached a verdict, guilty or
4 not guilty as to each count, the entire jury will be asked
5 to come into the court. The foreperson will be asked
6 whether the jury has reached a verdict. And if you say
7 yes, we will then ask you what the verdict is. And we may
8 ask all the jurors if that is your verdict.

9 Again, I am going to give you the verdict sheet.
10 It is Court Exhibit A. It lists each count that's
11 submitted for your consideration. Use the form to record
12 your verdict. And you will have that with you when you
13 come back into court to let you know what the verdict is.

14 There are a few remaining rules which you must
15 observe during your deliberations. While you're in the
16 courthouse deliberating on the case, you're going to be
17 kept together in the juryroom. You cannot leave the
18 juryroom during deliberations. Of course, we are going to
19 provide lunch to you. If you have a cellphone or any other
20 electronic device, we will have you give it to the court
21 officer to hold for you while you're engaged in
22 deliberations.

23 Again, as I said, you can only deliberate about
24 the case when you're all gathered together. If for some
25 reason someone or more than one needs to leave the room

- Court Charge -

1 with one of our court officers, deliberations cease until
2 you're all 12 together.

3 During your deliberations, you must discuss the
4 case only among yourselves. You must not discuss the case
5 with anyone else, including the court officer, or permit
6 anyone other than a fellow juror to discuss the case in
7 your presence. If you have a question or a request, again,
8 you're going to communicate with me by a written note,
9 which you will give to the court officer, who will give it
10 to me.

11 I should explain to you that under the law, I'm
12 not permitted to have a conversation about the facts of the
13 case or possible verdict or vote of the jury on any count
14 with any juror or group of jurors or even all the jurors.
15 Thus, in any note that you send me, please don't tell me
16 what the vote is as to any count.

17 In closing, and before I send you off for your
18 deliberations, folks, during the course of the trial you
19 have undoubtedly received certain impressions as to how the
20 issues ought to be decided. You should not allow those
21 impressions to become so fixed in your mind that they
22 prevent you from fairly and frankly discussing this case
23 with each other in the juryroom, and discussing your
24 thoughts on the case with those who may have a different
25 point of view. While it is the duty of each of you to

- Court Charge -

1 discuss and consider the opinions of others, you must
2 decide the case solely upon your opinion of the evidence,
3 and on your ability and conscience. It's your duty to give
4 us an absolutely fair and impartial verdict. The parties
5 are entitled to your fairest and your absolute impartial
6 consideration. You must base your verdict upon the
7 evidence alone. Your judgment should not be based on
8 sympathy or any consideration outside of the evidence.
9 When you were sworn as jurors, you accepted the obligation
10 to set aside all sympathy, and decide this case upon the
11 evidence that you have heard and under the rules of law
12 that I have given you. Both the defendant and the
13 prosecutor are entitled to a fair and impartial verdict.

14 Could I have counsel at the Bench for a moment,
15 please?

16 (Conference at the Bench, with two lawyers and the
17 defendant.)

18 THE COURT: We have had a brief discussion at the
19 Bench, with counsel. Folks, we are ready to send you back
20 to begin your deliberations. We wish you the best of luck
21 in this. I am going to ask our alternates, Mr. Deitz and
22 Miss Grome, to stay here with us momentarily. And we would
23 send the 12 of you in there. We are going to have the
24 lunches here we hope around 11:30. We will get you
25 started. As I said, if you have any notes, write those for

- Jury deliberations -

1 us. We might not be able to get back to you until about
2 12:30 because -- the first note, because of other things we
3 have to do.

4 If we could be of any assistance let us know,
5 good luck, okay?

6 (Jury left the courtroom at 11:00 a.m.)

7 COURT ATTENDANT: If the alternates could stand
8 right here?

9 THE COURT: Come on back up please, counsel. I
10 should have asked.

11 (Conference at Bench.)

12 THE COURT: We are outside the presence of the
13 jury. We have our alternates here. Mr. Centra, I brought
14 both counsel and Mr. Jennings to the Bench at the close of
15 my charge. I asked if there was any objection to the
16 charge. And you indicated that you had no objection?

17 MR. CENTRA: That's correct, Your Honor.

18 THE COURT: Same with Mr. LoFaro?

19 MR. LOFARO: Correct, Judge.

20 THE COURT: All right. Also, we have our two
21 alternates, Mr. Dietz and Miss Grome. It's like being the
22 bridesmaid, okay? Here you are, you're almost there. And
23 now the jury has retired. We are not done with you yet.
24 At some point we may release you today. It's a decision to
25 be made by the parties. But we will put you in a room

- Alternate jurors -

350

1 separate from our jurors. And we will get you lunch. Your
2 lunch is coming, I think, at 11:30. And we will get that
3 to you. And then when we come back, at 12:30, we will know
4 better whether you're going to stay or whether you're going
5 to go, okay? Thank you, folks.

6 You're all set with this, Chrissie?

7 COURT ATTENDANT: Yes.

8 (Alternates left the courtroom at 11:02 a.m.)

9 THE COURT: Outside the presence of the jury, as
10 I said, gentlemen I have to go impanel a new Grand Jury.
11 Mr. Reagan and I are going to do that now. And that's
12 going to take us an hour. Their lunches will come. I want
13 to give our court staff an hour for lunch. So we will get
14 ahold of both of you as soon as we hear something. I have
15 a feeling they probably want something. So maybe we could
16 plan on reconvening at 12:30. But if you have to wait for
17 a call, feel free, you know. It's up to the two of you.

18 Let's get the exhibits together. And here is the
19 verdict sheet. We will send those into the jury.

20 (Pause for organizing exhibits.)

21 THE COURT: Thank you. So let's reconvene at
22 12:30 just to see where we are. Is that all right?

23 MR. LOFARO: Yes, that's fine, Judge.

24 THE COURT: Okay. All right. Thank you.

25 (Recessed at 11:03 a.m.)

- Jury Note -

1

*

*

*

2 (At 11:30, a jury note was received and later marked as
3 Court Exhibit B.)

4

*

*

*

5 (At 12:34 p.m., the following occurred in court:)

6 THE COURT: We are back in session. Mr. Centra,
7 Mr. LoFaro, Mr. Jennings. I received a note from the jury
8 which I marked Court's Exhibit B. The question from the
9 jury, gentlemen: What is Molly? What does it look like?

10 I can't answer that question. There is no
11 evidence that I can give, nothing that I can say about it.
12 My answer is going to be: I can't answer that question.
13 Okay. Whatever testimony there was in the record about it,
14 we have asked Mr. Reagan to look that up. And in the event
15 that the jury wants to hear. I don't think there was
16 anything that's helpful there either. But we are not going
17 to give that to them now.

18 What I am going to say is, I appreciate your
19 questions. I can't answer them.

20 Anything else that anybody wants me to say?

21 MR. CENTRA: No, Your Honor.

22 MR. LOFARO: No, Your Honor.

23 THE COURT: Let's have the jury. We are going to
24 let the alternates go?

25 MR. LOFARO: Certainly.

- Jury Note - Court Exhibit B -

352

1 THE COURT: I have to ask that question: Under
2 no circumstances would you let them enter the deliberations
3 now?

4 (The jury entered the courtroom at 12:38 p.m.)

5 THE COURT: Good afternoon, folks. I hope the
6 lunch was okay. We are back in the presence of the jury.
7 Mr. Centra, Mr. LoFaro, Mr. Jennings.

8 Folks, I received a noted, signed by the
9 foreperson. I have marked it Court's Exhibit B. Two
10 questions. What is Molly? What does it look like?

11 I can't answer either question for you. All
12 right. The only thing we can answer is evidence that has
13 been presented at the trial. I can't affirmatively answer
14 those types of things. I did ask Mr. Reagan, our court
15 reporter, to find references to that in the record, should
16 that help you later. We do have that if you want that.

17 Later, if you send out a note if you want it,
18 that's up to you. But as far as that goes, it's not much
19 more I can tell you, except to send you back to continue to
20 deliberate.

21 If there is anything else that we can, that we
22 can help you with, let us know.

23 And we certainly will ask our alternates to stay
24 with us for now. And the rest of you, we will send you
25 back to keep deliberating. Thank you. Sorry.

- Alternates -

1 (The jury left the courtroom at 12:39 p.m.)

2 (Pause as the alternates are present in the courtroom.)

3 THE COURT: We are outside the presence of the 12
4 sworn jurors. And we have our two alternates with us: Mr.
5 Dietz and Miss Grome. The jury has now been deliberating
6 for more than an hour, and is deep into the deliberations.

7 And Mr. LoFaro, do you know -- that's a standard
8 question that I have to ask in order to release our
9 alternate -- is there any circumstance now that you can
10 envision where if we lost one of our jurors, you would
11 allow the alternates or one of the alternates to enter the
12 juryroom?

13 MR. LOFARO: No, Your Honor.

14 THE COURT: And you discussed this with Mr.
15 Jennings, we are going to relieve and release our
16 alternates?

17 MR. LOFARO: That's correct, Your Honor. I will
18 thank Mr. Dietz and Ms. Grome as well.

19 THE COURT: I know Mr. Centra joins in that, as
20 do I. It has been a relatively short trial. And what I do
21 often during the trial is look to see what the jurors are
22 doing. You know, and what I noticed during this entire
23 trial, including the two of you, is our jurors have been
24 riveted on the testimony. And I appreciate that. And I
25 know both of you were ready to enter the deliberations if

- Alternates -

1 called upon. We were lucky we hadn't gotten to that point.
2 No one was gotten sick or not appeared.

7 Folks, there was a prohibition for you talking to
8 the attorneys. That's gone. I am not saying you have to,
9 but you may. All right? You may talk to each other about
10 it. Just to be, we see the jurors, where you are going to
11 talk to them, we are going to collect your -- we will get
12 your things. You will be free to go, again, with our
13 thanks, and with thanks of Mr. Jennings, Mr. LoFaro, Mr.
14 Centra. Okay.

15 MR. CENTRA: Thank you.

16 THE COURT: Thank you. Mr. Dietz, we will get
17 that to you before you go.

18 ALTERNATE JUROR: Thanks.

19 THE COURT: Thank you.

20 ★ ★

21 (At 1:16 p.m., jury note marked Court Exhibit C.)
22 THE COURT: We have got to put some stuff on the
23 record. We are back in session without the jury. Mr.
24 Centra is here. Mr. LoFaro is here. Mr. Jennings is here.

I received another note from the jury which I

- Jury Note - Court Exhibit C -

355

1 have given copies to you all, Exhibit C: What are the
2 three rules for sentencing on the two counts? I am
3 assuming, and I will ask our foreman, Mr. McCarthy, they
4 mean the elements of the two counts. Because as you both
5 recall, there are three elements as to each count.
6 Obviously, sentencing is not something for them to
7 consider. I am guessing they wrote the wrong word.

8 THE CLERK: Maybe. Sure. Nobody --

9 THE COURT: Is that up or next door? So,
10 gentlemen, any problem with the way I want to handle it?

11 MR. LOFARO: That sounds great.

12 MR. CENTRA: That's fine with me, Your Honor.

13 THE COURT: Okay. Fantastic. Let me find it.
14 Chrissie, get the jury.

15 (The jury entered the courtroom at 1:19 p.m.)

16 THE COURT: Back in the presence of the jury,
17 with both counsel and Mr. Jennings.

18 I know there is some banging going on. They are
19 doing some reconstruction or something. I apologize for
20 that. If it continues we will try to speak up a little
21 louder, if we need to.

22 I did receive a note from the jury, Exhibit C,
23 signed by our foreperson: What are the three rules for
24 sentencing? On the two counts.

25 Mr. McCarthy, I am assuming -- and I have

- Jury Note - Court Exhibit C -

356

1 discussed this with the attorneys -- I am assuming you mean
2 the three elements as to each count?

3 THE FOREMAN: Correct.

4 THE COURT: Yes?

5 THE FOREMAN: Yes.

6 THE COURT: That's what we thought. As you know,
7 folks, and it's easy, we throw out a lot of these terms
8 during the course of a trial. If there is -- you know,
9 this, I just want to warn you again if there is to be any
10 sentencing, if there is, that's up to me. I know this was
11 just a word that was misplaced. It should have been: What
12 are the three elements on the two counts? I will give
13 those to you now. Count One is criminal possession of a
14 controlled substance in the third degree. A person is
15 guilty of criminal possession of a controlled substance in
16 the third degree when that person knowingly and unlawfully
17 possesses a narcotic drug with the intent to sell it. In
18 order for you to find the defendant guilty of this crime,
19 the People are required to prove from all of the evidence
20 in the case, beyond a reasonable doubt, each of the
21 following three elements: That on or about January 5th,
22 2016, in Onondaga County, the defendant Tony Jennings
23 possessed cocaine. And Two, that the defendant did so
24 knowingly, and unlawfully. And Three, that the defendant
25 possessed cocaine with the intent to sell it.

357

- Jury Note - Court Exhibit C -

1 If you find the People have proven both -- all
2 three elements, beyond a reasonable doubt, you must find
3 the defendant guilty. If you find the People have not
4 proven beyond a reasonable doubt any one or more of those
5 elements, then you must find the defendant not guilty.

6 Criminal possession of a controlled substance in
7 the fifth degree. A person is guilty of criminal
8 possession of a controlled substance in the fifth degree
9 when that person knowingly and unlawfully possesses
10 cocaine, and said cocaine weighs 500 milligrams or more.
11 In order for you to find the defendant guilty of this
12 crime, the People are required to prove from all of the
13 evidence in the case, beyond a reasonable doubt, each of
14 the following three elements: That on or about the 5th day
15 of January 2016, in the County of Onondaga, the defendant
16 Tony Jennings possessed cocaine. And that the defendant
17 did so knowingly, and unlawfully. And that the cocaine
18 weighed 500 milligrams or more.

19 If you find the People have proven beyond a
20 reasonable doubt each of those elements, you must find the
21 defendant guilty of that charge. If you find the People
22 have not proven beyond a reasonable doubt any one or more
23 of those elements, you must find the defendant not guilty.

24 I hope that helps, folks. If you need anything
25 else let us know. Thank you.

- Verdict -

1 (The jury left the courtroom at 1:23 p.m.)

2 * * *

3 (Jury note marked at 2:45, and the following occurred in
4 court at 2:51 p.m.:)

5 THE COURT: We are back in session, Pat. We have
6 Mr. Centra, Mr. LoFaro, Mr. Jennings. I have received a
7 note from the jury, Exhibit D, as marked. And they tell us
8 that they have a verdict. So if we could have the jury and
9 we will take the verdict, please?

10 (The jury entered the courtroom at 2:53 p.m.)

11 THE COURT: All right. Ladies and gentlemen, we
12 are back in session with our jury. With Mr. Centra, Mr.
13 LoFaro, and Mr. Jennings. I have received a note from the
14 jury. We marked it as Exhibit D, indicating that the jury
15 has reached a verdict. Is that correct, Mr. McCarthy?

16 JUROR NO. 1 (THE FOREMAN): Yes.

17 THE COURT: Do you mind standing for me, sir?
18 And as to Count One, criminal possession of a controlled
19 substance in the third degree, what is the verdict of the
20 jury?

21 THE FOREMAN: Guilty, Your Honor.

22 THE COURT: And sir, as to Count Two, criminal
23 possession of a controlled substance in the fifth degree,
24 the jury's verdict?

25 THE FOREMAN: Guilty, also.

- Verdict -

1 THE COURT: Thank you. And you can sit down, Mr.
2 McCarthy. Thank you.

3 And ladies and gentlemen of the jury, is that the
4 verdict of all of you as to Count One, guilty?

5 (Jury response.)

6 THE COURT: And as to Count Two, also guilty?

7 (Jury response.)

8 THE COURT: Do either counsel wish the jury to be
9 polled?

10 MR. LOFARO: Please, Your Honor.

11 THE COURT: All right. Juror No. 1, that is your
12 verdict, guilty as to both counts?

13 THE FOREMAN: Yes, sir.

14 THE COURT: No. 2?

15 JUROR NO. 2: Yes, sir.

16 THE COURT: No. 3?

17 JUROR NO. 3: Yes.

18 THE COURT: No. 4?

19 JUROR NO. 4: Yes.

20 THE COURT: No. 5?

21 JUROR NO. 5: Yes.

22 THE COURT: No. 6?

23 JUROR No. 6: Yes, sir.

24 THE COURT: Juror No. 7, your verdict as to both
25 counts is guilty, is that correct?

- Verdict -

1 JUROR NO. 7: Yes, sir.

2 THE COURT: No. 8?

3 JUROR NO. 8: Yes, sir.

4 THE COURT: No. 9?

5 JUROR NO. 9: Yes, sir.

6 THE COURT: No. 10?

7 JUROR No. 10: Yes.

8 THE COURT: No. 11?

9 JUROR NO. 11: Yes.

10 THE COURT: 12?

11 JUROR: Yes.

12 MR. LOFARO: Satisfied.

13 THE COURT: Yes?

14 MR. LOFARO: Yes, Your Honor.

15 THE COURT: I have the verdict, folks. There is
16 no way to properly thank you, I think, with words for what
17 you have done for these last few days. I thank you on
18 behalf of everyone in here, whether it be the Court staff,
19 the deputies that have worked the case, Mr. Jennings, Mr.
20 LoFaro, and Mr. Centra.

21 Without you, the system doesn't work. It just
22 works -- this is the example of how the system works. The
23 12 of you getting together and giving us a verdict. Your
24 service is over. It will be over for the next ten years.
25 What I will do is I will come back and speak to you for a

- Verdict -

1 moment, and just see if I can answer any questions that you
2 may have before we have you go home. We have something for
3 you. Not much. We have something for you.

4 But again, on behalf of all the attorneys, and
5 everyone else associated with the case, thank you very much
6 for your service.

7 (The jury left the courtroom at 2:55 p.m.)

8 THE COURT: We are outside the presence of the
9 jury, both counsel and Mr. Jennings. I am going to hold
10 Mr. Jennings without bail until the time of sentence.
11 Sentence will be on March the 8th.

12 Mr. Jennings, the probation department will
13 interview you and expect you to cooperate with them while
14 they do that interview. And we will put it on for
15 sentencing on March 8th at 9:15. Does that date work for
16 you, Mr. LoFaro?

17 MR. LOFARO: It does, Your Honor.

18 THE COURT: All right. And anything else we need
19 to discuss, gentlemen, before we break? Mr. Centra?

20 MR. CENTRA: No, Your Honor.

21 THE COURT: And Mr. LoFaro?

22 MR. LOFARO: No, Your Honor.

23 THE COURT: Okay. Patrick, thank you very much.
24 Thank you.

25 (End of Trial at 2:56 p.m.)

TRIAL INDEX

p. 363

People v. TONY JENNINGS

February 6, 7, and 8, 2007

Indictment #: 2016-0961-1; Index #: 16-049

	<u>Pages:</u>	<u>Volume:</u>
Monday, February 6, 2017	2	I
Tuesday, February 7, 2017	189	II
Wednesday, February 8, 2017	322	II

- Index/Exhibits	363/364
------------------	---------

*	*	*	*
---	---	---	---

<u>Jury Selection:</u>	<u>Court</u>	<u>Centra</u>	<u>LoFaro</u>	<u>Challenges</u>
Panel I	22	88	95	117
Panel II	125	156	160	163

Openings:	169	192	196
-----------	-----	-----	-----

People's Witness:	Direct	Cross	Redirect	Recross
-------------------	--------	-------	----------	---------

Jeremy Decker	204	212	219/221	220
Darrin Ettinger	221	227	X	
Jennifer Wilson	233	242		
David P. Proud	247	254		

People rest	257
-------------	-----

Defendant's Witness:	
----------------------	--

Howard Davis	264	267	269	270
Tony Jennings	271	290		

Defense rests	297
---------------	-----

Closing - LoFaro	301
Closing - Centra	309

Charge discussions	298/322
--------------------	---------

Court Charge	328
--------------	-----

Jury Notes	351 - 358
------------	-----------

Verdict	358
---------	-----

*	*	*
---	---	---

page: 364

TRIAL EXHIBITS

People v. TONY JENNINGS

February 6, 7 and 8, 2017

People's Exhibits:

<u>Exhibit No.</u>	<u>Description</u>	<u>Marked</u>	<u>Received</u>
1	Digital scale	207	207
2	Packaged drugs	210	210

* * *

Defendant's Exhibit:

A	Photograph	272
---	------------	-----

* * *

Court's Exhibits:

A	Blank verdict sheet	350
B	Jury Note (Molly)	351
C	Jury Note (Elements of crime)	354
D	Verdict reached	358

* * *

PR 7/27/12